300. This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence. Labor Board v. Nevada Consolidated Copper Corp., 316 U.S. 105, 106; Keele Hair & Scalp Specialists, Inc. v. FTC, 275 F. 2d 18, 21.

Congress was very deliberate in adopting this standard of review. It frees the reviewing courts of the time-consuming and difficult task of weighing the evidence, it gives proper respect to the expertise of the administrative tribunal and it helps promote the uniform application of the statute. These policies are particularly important when a court is asked to review an agency's fashioning of discretionary relief. In this area agency determinations frequently rest upon a complex and hard-to-review mix of considerations. By giving the agency discretionary power to fashion remedies, Congress places a premium upon agency expertise, and, for the sake of uniformity, it is usually better to minimize the opportunity for reviewing courts to substitute their discretion for that of the agency."

This court had occasion to make notation of the same limitations in Trans-Pacific Frgt. Conf. of Japan v. Federal Maritime Com'n., 314 F. 2d 928, 935, where, citing decisions of the Supreme Court, we said: "The Commission was an administrative body set up for the purpose of dealing administratively with the problems presented from time to time under the Shipping Act. Its function in this respect was not unlike similar functions performed by the National Labor Relations Board, the Federal Communications Commission, and other commissions created by act of Congress. It has long been recognized that such an administrative body has a broad discretion in effectuating the policies

of the Act creating the Commission to determine whether certain statutory requirements apply to certain individuals or groups. In making those decisions such administrative bodies are not limited by common law concepts. The question always is whether the determination of the board or commission has '"warrant in the record" and a reasonable basis in law.' National Labor Relations Board v. Hearst Publications, 322 U.S. 111, ..."

In our view the very complete and elaborate decision of the Maritime Commission discloses that its conclusions do have warrant in the record, a reasonable basis in law, and are supported by substantial evidence.

The petition for review is denied and the order of the Commission is affirmed.

Appendix C

Report and Order of Federal Maritime Commission

S E R V E D

September 24, 1965

FEDERAL MARITIME COMMISSION

Federal Maritime Commission

NO. 1086

STOCKTON PORT DISTRICT

v.

PACIFIC WESTBOUND CONFERENCE ET AL.

Respondents' equalization rules, and practices in accordance therewith, found to be unjustly discriminatory and unfair to terminal ports of the San Francisco Bay area (which include Stockton), within the meaning of section 15 of the Shipping Act, 1916, to the extent that they provide for equalization of inland transportation against such ports on cargo loaded at Los Angeles and Long Beach, California.

Filed equalization rules of respondents operating under approved conference agreements, and practices in accordance therewith, to the extent that they provide for equalization of inland transportation charges between San Francisco Bay area ports (which include Stockton), found not to be in violation of sections 15, 16 First, 17 or 18(b) of the Shipping Act, 1916, or to be unjustly discriminatory or unfair, detrimental to the commerce of the United States, or contrary to the public interest, within the meaning of section

15 of said Act, if clarified as required; found not to violate the principles and policies of section 8 of the Merchant Marine Act, 1920; and not shown to be in violation of section 205 of the Merchant Marine Act, 1936.

Respondent Pacific Westbound Conference and its members found not to be in compliance with section 18(b) of the Shipping Act, 1916, by reason of so-called "equalization" on citrus fruit originating in Southern California and shipped from San Francisco, which is not in accordance with or pursuant to filed equalization rule.

J. Richard Townsend and *Walter H. Meryman* for Stockton Port District, complainant.

Edward D. Ransom and *Gordon L. Poole* for Pacific Westbound Conference and members, respondents.

Leonard G. James, Robert L. Harmon and *F. Conger Fawcett* for Pacific Straits Conference, Pacific/Indonesian Conference, and their members, respondents.

Stanley Mosk and *Miriam E. Wolff* for San Francisco Port Authority, intervener.

Wm. Jarrel Smith, Jr. and *Robert J. Blackwell* for Hearing Counsel, intervener.

REPORT

By the Commission: (John Harllee, Chairman; Ashton C. Barrett and James V. Day, Commissioners)

This proceeding arose upon the complaint of Stockton Port District against the Pacific Westbound Conference, the Pacific Straits Conference, and the Pacific/Indonesian Conference. The complaint alleges, in general, that the agreements of these conferences and the conference tar-

iffs, which permit port equalization, are prejudicial to the Port of Stockton and contrary to various statutory provisions. Stockton urges the Commission to order the respondent conferences to delete the port equalization rules from the conference tariffs and to cease and desist from the practice of port equalization.

Port equalization, under the respondent conferences tariffs, permits conference carriers to equalize inland transportation costs between terminal ports. Thus, under the tariff rules, a carrier may reimburse a shipper for the difference between the shipper's inland transportation costs to the nearest terminal port and the shipper's inland transportation costs to the terminal port of loading. For example, if from the point of origin of the cargo it will cost the shipper 34 cents per hundred pounds to ship overland by common carrier to the Port of Stockton and 42 cents per hundred pounds to ship overland by common carrier to the Port of San Francisco, the ocean carrier may take the shipment at San Francisco and "equalize" the added inland cost by reimbursing the shipper for the excess of 8 cents per hundred pounds which it has cost him to ship via San Francisco instead of Stockton.

Stockton alleges that the port equalization rule results in diversion of volumes of cargo normally tributary to Stockton. This is allegedly contrary to the purposes and policies of section 8, Merchant Marine Act, 1920, and section 205, Merchant Marine Act, 1936. Furthermore, Stockton asserts that the rule and its implementation are agreements unapprovable under section 15, Shipping Act, 1916; that the rule is discriminatory and unreasonable in violation of sections 16 and 17 of the Shipping Act; and Stockton urges that the conferences have violated section 18(b) of the Shipping Act by departing from their conference tariffs.

FACTS

The Conference and the Port Equalization Rule

The Pacific Westbound Conference (PWC), organized in 1923, has at present a membership of 28 common carriers. PWC serves the trade outbound from the Pacific Coast of the United States to destinations in the Orient, principally Japan, the Philippines, and Hong Kong. In 1962, PWC members made 1240 sailings, each representing a vessel calling at one or more Pacific Coast ports and clearing for a destination in the Orient.

The Pacific Straits Conference operates from Pacific Coast ports to Singapore, Malaya, Sarawak, North Borneo, and Brunei. The Pacific/Indonesian Conference operates from Pacific Coast Ports to Indonesia.

PWC sets ocean rates which apply without reservation from terminal ports. Terminal ports are those at which PWC members accept cargo for loading at the base rates named in the PWC tariff. Terminal ports in California are Stockton, Richmond, Oakland, Alameda, San Francisco, Los Angeles, Long Beach, San Diego, and Sacramento.[1]

The port equalization rules apply to terminal ports only and the rules presently in effect for respondents are set forth in the attached appendix.

Whenever cargo is equalized, the shipper must submit to the member booking the cargo the transportation bill covering the movement from point of orgin. In turn, the carrier must submit the information to the conference for certification of the basis for the equalization. Although the

1. Sacramento is not a terminal port in the Pacific Straits or Pacific/Indonesian Conferences. Service at Sacramento in these conferences is subject to a tonnage restriction of a minimum of 500 tons from one shipper.

tariff requires use of an approved form, only one of the PWC members uses the form at present; the others provide the actual source documents. The documents include information sufficient to disclose the point of origin, date of shipment, commodity, nearest terminal port, port of loading, information regarding the inland freight rates, and the inland freight bill. The conference office endeavors to check the rates contained in the source documents. This check is particularly necessary on the constructive leg of the equalization; i.e., the rate from the point of origin to the nearest terminal port. For the actual leg of the equalization, the conference uses the inland transportation bill for the actual routing of the cargo.

The conference is familiar with the rates involved in the equalization of the more important cargoes and it checks to see if the rates and equalization are reasonable. Upon encountering a questionable item, the conference refers to an inland freight tariff or telephones a trucking company or railroad. The conference is aware of the trucking company that actually carried the cargo, and they use the actual transportation costs.

For the constructive leg of the equalization, the conference uses the lowest common carrier rates to the nearest loading port. In this context, nearest means cheapest.

The claims for equalization and the supporting documents are generally submitted to the conference fairly soon after the vessel has sailed, but certain of the conference members may accumulate equalization claims for a week to two weeks. There is no conference rule regarding the time within which claims must be presented. Equalization cannot be paid until approved by the conference.

In addition to the privilege to equalize, the PWC tariff permits transshipment. Under transshipment, the shipper delivers the cargo to Stockton, the carrier accepts the

cargo and issues a negotiable document, and thereafter for its convenience and at its own expense the carrier may move the cargo to San Francisco for loading on the vessel. The cargo may be handled by truck, rail, or barge; however, it is predominantly moved via truck. Generally, only commercial general cargo is transshipped from Stockton. In the case of transshipment the steamship carrier is obliged to pay the inland freight as well as the terminal charges at both Stockton and San Francisco. Usually transshipment is limited to smaller tonnages, particularly where there is insufficient cargo at Stockton to justify a call, or some operational reasons make it impossible to make an intended call. There is no cost to the shipper for transshipment.

The Port of Stockton

The Stockton Port District is a public corporation formed pursuant to the *Harbors and Navigation Code of California*. The Port District operates terminal facilities owned by the Port District or the City of Stockton. The port consists of 10 general cargo berths, one of which is open with two 30-ton gantry cranes, two bulk docks, and one bulk grain dock. The general cargo berths are marginal-type wharves on concrete pilings with corrugated steel transit sheds. Adjoining the transit shed area, are warehouse facilities, a cotton compress, cotton warehouse, a bulk wine terminal, and a grain elevator. Stockton also leases from the Navy two berths and one transit shed on Rough and Ready Island. In the immediate area is a basin in which vessels calling at Stockton turn around, after discharging or loading cargo, to proceed downstream. At the beginning of 1964, a total of $23,000,000 had been invested in the Stockton facilities. The Port of Stockton is reached via the Stockton Ship Channel, a journey of some 75 nautical miles

(or 84 statute miles) from the Golden Gate. The channel, a Congressional project, was approved August 26, 1937. The average transit time from San Francisco Bay to Stockton via the channel is 7½ to 8 hours not taking into account delays due to fog or bridge liftings. The channel is at least 30 feet deep at mean low water. Although there are occasional groundings and delays due to fog, the conditions of the channel are satisfactory and not a serious factor in preventing a vessel from calling at Stockton. The largest cargo vessels of PWC can call at Stockton without unusual difficulty.

On August 1, 1957, PWC made Stockton a full terminal port, and since this time Stockton has had a phenomenal growth. Equalization did not affect Stockton until it became a full terminal port.

Impact of Equalization on Stockton

Stockton claims a loss of revenue to the port by virtue of equalization during 1962 of $232,000. The port lost revenue from its terminal charges—service and facilities charge, wharfage, truck unloading, dockage, and pre-palletization. Very little additional labor would be needed to accommodate this cargo insofar as wharfage and dockage are concerned, but the service and facilities charge has a considerable amount of labor. Most of the charge for truck unloading, line handling, and pre-palletization is labor costs.

Service at Stockton

During 1962, 85 vessels of respondent conferences made actual calls at Stockton and many of these lifted general cargo. In contrast, vessels of members of the Pacific Coast European Conference made 227 calls at Stockton in 1962

and lifted 260,000 tons of cargo. Of the lines calling at Stockton only OSK makes Stockton its last port of loading outbound. "K" Line made its first call at Stockton in June 1962 and made fairly regular calls thereafter. Pacific Far East Line (PFEL) operates 9 vessels in the PWC trade and practically all sailings have Stockton calls. PFEL discharges cargo at Stockton on all voyages, but export cargo is ordinarily not available at the time of the inbound call. About one-half of PFEL's outbound vessels call at Stockton, principally for bulk bottom cargoes in parcel lots. These bulk cargoes are at least 75 percent safflower seed, but from time to time include wheat and barley. They are loaded at Stockton Elevators. When the vessel calls for bulk, if there is sufficient general cargo available, the vessel will shift to a general cargo berth to load. PFEL made 30 calls at Stockton in 1962; however, Stockton is not the final port of loading in the PWC trade for PFEL. PFEL does consider itself to have a regular outward service at Stockton.

American President Lines (APL) had 24 calls at Stockton in 1962, five discharged cargo only and 12 loaded bulk only. In the first half of 1963, APL guaranteed shippers that vessels would call at Stockton regardless of the amount of cargo offered, but the plan proved to be uneconomical and was dropped. APL's service at Stockton definitely depends upon the availability of bottom cargoes, and Stockton is not the last loading port for APL vessels.

N.Y.K. Line provides no regular service at Stockton. Diado Line had 4 calls at Stockton in 1962 and United Philippine Lines had none. States Steamship Company had 4 calls in 1963 which loaded bulk rice and some general cargo.

Of the PWC members, 15 made at least one call at Stockton during 1962; 13 made no calls. PWC made a total of

133 calls, but of those no commercial general cargo[2] was loaded on 90 calls.

Vessels loading at Stockton generally can load commercial and military cargo at the same berth, but vessels loading bulk must shift to a different facility to load other cargo. The shift costs about $300 for pilot and tug.

Steamship Costs and Operational Factors Pertaining to Calls at Stockton

As noted above, it is an 8-hour trip in each direction to reach Stockton from the bay area. Thus, a carrier incurs additional expenses in steaming to Stockton, including transiting time, pilotage, tugs, and other incidental expenses. Estimates of the total of these costs range from $3,000 to $4,000.

There may be insufficient cargo to justify a call, and that cargo, for operational reasons, would be equalized or transshipped. It depends on the commodity as well as the volume to determine whether a Stockton call is justifiable. Amounts ranging from 250 tons to 750 tons might justify a call dependent on the nature of the cargo.

It is also not operationally feasible to call at every terminal port. This is particularly so of lines that have European or East Coast cargo aboard and merely top-off on the West Coast before proceeding to the Orient. Such lines would usually call at one terminal for relatively small amounts of cargo. There is an operational saving by consolidating cargo at one terminal.

Equalization gives the vessel latitude in loading and scheduling and the flexibility to avoid uneconomical calls. Equalization rather than transshipment is the better way

2. In this context, commercial general cargo means packaged, high-rated items, not bagged fertilizer and other low-rated items.

to achieve this latitude and flexibility. Equalization, which averages about $2.00 to $2.50 per ton, is substantially cheaper than transshipment. Transshipment is roughly 3 times more expensive.

Impact of Equalization on Carriers and Shippers

In spite of the operational factors encouraging equalization, certain carriers and shippers are opposed to the rule, as presently practiced. PFEL feels the rule is detrimental to its interest since it is one of the few PWC members calling regularly at Stockton, and equalization dilutes cargo tributary to Stockton. Without equalization much of the cargo would move through Stockton and, of course, PFEL would have vessels available. PFEL feels that equalization should only expedite vessel operations, but a carrier with no intention of calling at Stockton should not be permitted to equalize. If a carrier does not call regularly at Stockton and has no intention of serving the port, then PFEL feels it should not be able to equalize. Although equalization is optional under the tariff, carriers find that competition compels them to equalize.

Some shippers also wish to have the Port of Stockon continue with adequate service. Some shippers believe that if they can ship cheaper via Stockton, then they should be permitted to do so, and feel that without equalization there would likely be enough cargo to generate sufficient service. Certain shippers also feel that if the steamship companies were not burdened with equalization expenses, they might adjust the rates. At any rate, shippers like to have Stockton available for use if convenient. Some shippers apparently experience some difficulty with equalization by virtue of delay in being paid and by additional clerical expense.

Other shippers, however, for several reasons, strongly favor port equalization. To them regularity of service is highly important as is the in-transit time of the shipment, and these shippers prefer to put their cargo aboard at the last loading port. The shorter the in-transit time, the quicker the shipper is paid by his customer. Minimum in-transit time is also critical when the commodity is perishable.[3] By equalizing, shippers have access to more frequent service at no additional expense. Of course, some shippers do not care whether Stockton is the last loading port.

Service is unquestionably adequate at San Francisco. However, adequacy of service at Stockton is dependent upon the needs of particular shippers. Some shippers consider the Stockton service inadequate to meet overseas commitments.

Transshipment, from a shipper's point of view, is no substitute for equalization because of delay and damage occasioned by rehandling.

Shippers in the PWC are confronted with one reality: the Japanese are insistent upon nominating vessels upon which many consignments are to be shipped and, thus, if the nominated vessel is not calling at Stockton, then the shipment is equalized against Stockton and exported through some other terminal port. One raisin supplier indicated that service at Stockton was adequate and that many shipments would move from Stockton but for the foreign nomination of vessels.

PWC Fidelity to the Equalization Rule

The record discloses a number of departures from strict adherence to the equalization rule. However, the only substantial disregard for the rule involves equalization on

3. If there were no equalization, many perishable commodities would still move through San Francisco rather than Stockton.

citrus fruit. On citrus fruit the conference approves equalization of $.15 per carton irrespective of the point of origin, the nearest terminal port, or the inland transportation costs. The $.15 per carton equalization is the excess of the quoted base price at the dock in San Francisco over the dock-side price in Los Angeles. This is not in accord with the PWC tariff.

Citrus fruit originates in Central and Southern California. Some of the citrus originates in areas tributary to Stockton on the basis of inland transportation costs. However, no citrus is equalized against Stockton, although the $.15 payment is made on shipments originating in an area tributary to Stockton.

Discussion and Conclusions

Examiner Walter T. Southworth concluded that equalization as practiced by respondents against Stockton was lawful under the Shipping Act, 1916, but that respondents' equalization on cargo loaded at Long Beach and Los Angeles was unjustly discriminatory and unfair to terminal ports in the San Francisco Bay area (including Stockton). The examiner further found that the so-called equalization on citrus fruit failed to comply with the requirements of section 18(b) of the Act. The proceeding is before us on exceptions to the Initial Decision.

Stockton contends that insofar as the examiner found respondents' equalization against the port of Stockton lawful he was in error. Exception is taken to each and every finding and conclusion upon which this portion of the Initial Decision is based and, in actuality, Stockton's exceptions on this issue constitute nothing less than a reargument of its position before the examiner. For the reasons set forth herein we agree with the conclusions of the examiner and,

if in stating those reasons we fail to treat any "specific exception," it has nevertheless been considered and found not justified.

The equalization here in question is said to (1) discourage the use of the Port of Stockton in violation of the principles and policies of section 8 of the Merchant Marine Act, 1920,[4] with resultant violations of sections 15 and 17 of the Shipping Act,[5] (2) result in unjust discrimination and undue prejudice against Stockton, and grant undue preference to the ports where cargo is loaded (particularly San Francisco, Wilmington, and Long Beach) in violation of sections 15, 16 and 17 of the Shipping Act. In addition, Stockton urges so-called "other grounds of unlawfulness." These "other grounds" will be treated after disposal of what we consider to be the principal issues.

The examiner concluded (1) that the ports of San Francisco and Stockton were of the same harbor complex or geographical area and that equalization between ports in the same geographical area was not contrary to the prin-

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4. Section 8 of the 1920 Act directs the Secretary of Commerce in conjunction with the Secretary of the Army—

> ". . . with the object of promoting, encouraging and developing ports and transportation facilities in connection with water commerce . . . to investigate territories, regions and zones tributary to such ports, taking into consideration the economies of transportation by rail, water and highway and the natural flow of commerce, and to investigate any other matter that may tend to promote and encourage the use by vessels of ports adequate to care for the freight which would naturally flow through such ports."

5. Stockton has apparently abandoned its contention that respondents' equalization constituted an unjust and unreasonable regulation and practice related to or connected with the receiving, handling, storing or delivery of property within the meaning of section 17. In any event, as the Examiner correctly pointed out, respondents' equalization rules and practices had nothing to do with the receiving, handling, storing or delivering of property. *Beaumont Port Commission v. Seatrain Lines*, 3 F.M.B. 556 (1951).

ciples and policies of section 8 of the 1920 Act, thus no violation of sections 15 and 17 of the Shipping Act resulted therefrom and (2) that the territory which was naturally tributary to Stockton was also naturally tributary to San Francisco, and that under the applicable precedents the absorption of inland freight differentials is unlawful only if it destroys the rights of ports to traffic originating in the areas naturally tributary to them, and (3) that respondents' equalization as practiced against Stockton was lawful under the applicable precedents. Stockton argues that the examiner was wrong on all three counts.

Port equalization is not unlawful in principle. *Beaumont Port Commission v. Seatrain Lines, Inc.*, 2 U.S.M.C. 500, 504 (1941). Equalization may be unlawful, however, if it draws from ports traffic which originates in areas naturally tributary to those ports, *City of Mobile v. Baltimore Insular Line, Inc.*, 2 U.S.M.C. 474, 486-87 (1941); *Proportional Commodity Rates on Cigarettes and Tobacco*, 6 F.M.B. 48, 55, 56 (1960), and if the port losing the diverted traffic can offer adequate service to shippers diverting to the favored port, *City of Portland v. Pacific Westbound Conference*, 4 F.M.B. 664, 679 (1955). Equalization may also be unlawful if it is practiced between ports located in different or separate harbors or geographic areas. *Beaumont Port Commission v. Seatrain Lines, Inc.*, 2 U.S.M.C. 699, 703 (1943).

With these principles in mind, we can now examine more closely the examiner's findings and conclusions.

The examiner treated Stockton as an integral part of the San Francisco Bay "harbor complex" and thus as being within the same "geographical area" which has access to the open sea through the Golden Gate. Stockton contends that the examiner erred because Stockton is not on the San Francisco Bay and it is 84 miles and 5 waterways removed

from San Francisco Bay. Secondly, the examiner concluded that the areas naturally tributary to Stockton were equally so to San Francisco. Stockton argues that here again the examiner fell into error because inland rates from the relevant area are lower to Stockton than they are to San Francisco. It is in this latter contention that we find the essential ingredient in Stockton's attack on respondents' equalization. In Stockton's view naturally tributary territory means simply "the area from which the inland transportation rates and mileages are less to a particular port than to any other port."

We agree with the examiner's conclusion that the ports of Stockton and San Francisco do not represent separate and distinct geographical areas. They are both "bay area" ports and have been uniformly treated as such for a variety of purposes. Thus, the California Legislature in a comprehensive report on the San Francisco ports issued in 1951 consistently referred to Stockton as a Bay area port. In setting up the Bay Area Protection and Promotion Program, now contained in *Harbors and Navigation Code,* section 1980, et seq., the San Francisco Bay Area is defined by the California Legislature as—

> . . . that region served by commercial shipping and transportation passing through the Golden Gate, including tributary areas of central and northern California . . . .

In seeking to bring itself within the protection of section 8 of the 1920 Act, Stockton relies on its physical separation from San Francisco Bay proper. But other factors must be considered in making determinations under section 8. Thus, the "economies of transportation" and the "natural flow of commerce" are relevant:

> . . . section [8] requires, all other factors being substantially equal, that a given geographical area and its ports receive the benefits of or be subject to the burdens naturally incident to its proximity or lack of proximity to another geographical area. (*City of Portland v. Pacific Westbound*, 4 F.M.B. 664.)

The delineation of a "given geographical area" will almost always of necessity involve the inclusion of ports whose location from specified inland points will vary in distance or mileage. Thus, mileage alone is not the determinative factor. In *Beaumont Port Commission v. Seatrain Lines, Inc.*, 2 U.S.M.C. 699 (1943) our predecessor permitted a carrier to equalize Texas City with Houston and Galveston, but not with Beaumont, Texas, where the geographical situation was quite similar to the one under consideration in this case—the geographical relation of Texas City, Houston and Galveston is comparable to that of San Francisco, Stockton and other bay area ports, and the position of Los Angeles is comparable to that of Beaumont:

> The geographical relationship of the ports involved, together with the peculiar characteristics of Seatrain's operation were emphasized at the further hearing. Texas City and Galveston are situated on Galveston Bay which is also the approach to Houston. Entrance to the Bay from the Gulf is through Galveston Harbor which is connected by ship channels with Texas City and Houston. In a geographical sense, the three ports may be described as Galveston Bay ports. Rail distances from Texas City to Galveston and Houston are 14.2 and 42.2 miles respectively. Rail rates on long haul export traffic are the same for the three ports which in *Rate Structure Investigation*, Part 3, Cotton, 165 I.C.C. 595, 660, were described as "one terminal district or port." Beaumont is an inland port situated on the Neches River and having access to the Gulf several

miles east of the Galveston Bay ports. It is approximately 126 miles by rail from Texas City. (2 U.S.M.C. at 701.)

The natural direction of the flow of traffic from the San Joaquin Valley, which Stockton seeks to have declared its exclusive preserve, is through the Golden Gate to the Pacific Ocean. For almost a hundred years before Stockton was made accessible to oceangoing vessels, San Francisco was the principal port through which freight from the San Joaquin Valley would and did pass. It did not cease to be such a port merely upon the creation of an additional port at Stockton.

As we have already noted, equalization, while lawful in principle, may be unlawful in practice if the effect of the equalization is to draw from ports traffic which originates in areas naturally tributary to those ports. *City of Mobile v. Baltimore Insular Lines Inc.*, 2 U.S.M.C. 474 (1941); *Proportional Commodity Rates on Cigarettes and Tobacco*, 6 F.M.B. 48 (1960). The examiner concluded that respondents' equalization practices did not violate sections 16 and 17 on this ground because the territory which is naturally tributary to Stockton is also naturally tributary to San Francisco. It should be kept in mind that the discrimination and prejudice which is prohibited by sections 16 and 17 is that which is unjust and unreasonable. *West Indies Fruit Company et al. v. Flota Mercante Grancolombiana S.A.*, 7 F.M.C. 66 (1962).

Stockton claims to have lost $232,000 in potential revenue on equalized cargo on the theory that all the equalized cargo would have moved through Stockton and that 50 additional ships would have called at Stockton to pick up 800 tons each. Stockton concedes that it would have had additional labor costs, but says that they would not have exceeded

$35,000. Actually these lost revenue figures are not valid because, as Stockton argues elsewhere, not all the equalized cargo would have gone to Stockton but for equalization, and the number of additional vessels which would have gone to Stockton is highly speculative.

On the other hand, at an average additional cost of $3,600 to send a vessel to Stockton it would have cost respondents some $180,000 to send 50 ships to Stockton, or about $67,000 more than the $113,030 it cost them to equalize. Thus, there is ample economic and cost justification for the discrimination against Stockton such as it is. But even this would not save respondents' equalization under the applicable precedents were it established that the practice drew cargo away from territory which was exclusively and naturally tributary to Stockton.

Stockton's argument for recognition of most of central California, including the great San Joaquin Valley, as its naturally tributary territory is based entirely upon minimum trucking rates to Stockton, which in turn are based upon the "constructive mileage" between points of origin and Stockton.[6] Stockton contends that the examiner misconstrued the applicable precedents in finding that Stockton's tributary territory was also San Francisco's. As Stockton reads the cases "tributary territory" is that area from which the inland transportation rates and mileages are less to a particular port than some other port. But Stockton's theory is only deceptively simple and does not comport with the principles laid down in prior cases. Under this "constructive mileage" theory the naturally tributary territory expands and contracts with every new highway inno-

6. "Constructive mileage" is actual mileage weighed by such factors as the number of traffic lights and bridges, the presence or absence of mountainous terrain, the condition of the highways and other factors affecting truck traffic.

vation because constructive mileage changes with new bridges, traffic lights and the like. Under Stockton's theory the territory is dependent upon which ports are named "terminal ports" by the carriers practicing the equalization. Thus, when the respondent Pacific Westbound Conference, but not the Straits or Indonesian Conferences, named Sacramento as a terminal port, Stockton's own witness, Mr. Phelps, stated that Stockton's tributary territory for the Pacific Westbound Conference was thereupon cut in half because "that is the way the arithmetic comes out."

In the *Beaumont* decision, *supra;* when it permitted Seatrain to absorb the difference between the cost of delivering cargo to Texas City and the cost of delivering to Houston and Galveston, the Board said at page 703:

> Our decision in the previous report condemned practices which permit a carrier to attract to its line traffic which is not naturally tributary to the port it serves, thus depriving other ports of their local tributary traffic. The testimony and argument on further hearing emphasize the question which we think is decisive in this case, whether the traffic in question can be considered as tributary to Seatrain [at Texas City] as well as to the break-bulk lines involved. Upon the facts stated in three above, we conclude that the area comprising the ports of Galveston, Houston and the surrounding territory is centrally served by Seatrain's facilities at Texas City. No reason appears therefore why that carrier may not effectively compete for the traffic through such ports. Beaumont is not within the Galveston Bay Group and the traffic through such port is not naturally tributary to Texas City.

Although Stockton urges that the examiner's reliance on the *Beaumont* decision is misplaced we think it reasonable, well founded and proper. Moreover, the Maritime Administration, Department of Commerce, and the Corps of Engineers, Department of the Army, the governmental agencies

charged with administering section 8, in their joint publication[7] covering the port of San Francisco, describe San Francisco as "one of the most important ports for the vast inland territory of the Central and Pacific Coast Area and the Intermountain States," under the heading "Tributary Territory." In their publication covering Stockton, the "Tributary territory" designated as that of Stockton is wholly within the territory attributed to San Francisco, and largely within the territory attributed to Oakland-Alameda in the publication covering those ports. It is obvious that these studies dictate a rejection of any "constructive mileage" theory for determining "naturally tributary territory."

We conclude, that for the purposes of this proceeding, the territory naturally tributary to Stockton should properly be considered naturally tributary to San Francisco and other San Francisco Bay area ports. To paraphrase the *Beaumont* decision, *supra*, the territory surrounding Stockton and the entire Bay area is centrally, economically and naturally served by the conference facilities at San Francisco.

Stockton further urges that respondents' equalization rule is unlawful, because the actual amounts to be absorbed under it cannot be determined from respondents' tariffs, but requires access to and examination of the overland tariffs. Stockton cites several cases construing the provisions of section 2 of the Intercoastal Shipping Act, 1933.[8] Section 18(b)(1) expressly provides for the inclusion in

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7. "The Ports of San Francisco and Redwood City, Calif." Port Series, No. 30, Rev. 1951.

8. Cases cited by Stockton are *Intercoastal Rates of Nelson Steamship Co.*, 1 U.S.S.B. 326 (1934); *Intercoastal Investigation, 1935*, 1 U.S.S.B. 400 (1935); *Puerto Rican Rates*, 2 U.S.M.C. 117 (1939); *City of Mobile v. Baltimore Insular Line, Inc.*, 2 U.S.M.C. 474 (1941); and *Matson Navigation Co.—Container Freight Tariffs*, 7 F.M.C. 480 (1963).

tariffs filed by the Commission of "rules and regulations" which change or affect the aggregate filed rate:

> Such tariffs . . . shall also state separately such terminal or other charge, privilege, or facility under the control of the carriers which is granted or allowed and any rules or regulations which in anywise change, affect, or determine any part or the aggregate of such aforesaid rates or charges. . . .

The basic philosophy behind the tariff filing requirements of both the Intercoastal Act and the Shipping Act is that the shipper can assure himself of the actual cost of transportation to not only himself but to his competitor as well, *Matson Navigation Co.—Container Freight Tariffs,* 7 F.M.C 480 (1963). We do not think respondents' tariffs run counter to this proposition. As the examiner stated, "the present rule, in practice, neither adds to nor detracts from the shippers ability to 'see for himself the exact price of transportation.'"

The ocean rate is, of course, specified in the respondents' tariffs. What the respondents' tariffs do not show is the difference between the cost of overland transportation from the shipper's point of origin to Stockton versus San Francisco. For that the shipper (or his competitor) has to go to the tariffs of inland carriers. But he would have to do so whether or not the equalization rule existed. With the equalization rule, his problem is really simplified; he need only ascertain the common carrier rate to Stockton, and he is assured by the ocean carrier's rule that he may ship via San Francisco for the same amount, with the carrier absorbing any excess. If he wants to get into further refinements, such as the comparative cost of shipping by common carrier versus his own truck or contract carrier, his problem is no more complicated than it would be if there were no equalization rule.

Stockton argues that the failure to set forth the actual amounts absorbed makes the equalization rule unlawful under section 18(b)(1) and detrimental to commerce and contrary to the public interest under section 15. But consider the form respondents' tariff would take if the actual amounts absorbed were included. The record does not contain even an estimate as to the number of "points of origin" for which equalization is made nor does it contain the number of commodities covered by equalization. But it is not difficult to imagine that a requirement that each and every possible absorption be published would soon render the tariff impossibly voluminous.

We are of the view that respondents' equalization rules are not unlawful under the "rules and regulations" portion of 18(b)(1).

Stockton contends that the determination of equalization payments under respondents' rules is, as a practical matter, impossible; and that therefore the rules (1) permit undue preference and prejudice between shippers, in violation of section 16 First, (2) constitute improper tariff publication, in violation of section 18(b)(1), and (3) violate section 15 of the Act, in that they are contrary to the public interest, detrimental to United States commerce, and unjustly discriminatory between shippers and exporters.

The Pacific Westbound Conference equalization rule provides that "Equalization shall only be paid on the basis of the lowest applicable common carrier or contract carrier rates." The rules of the Pacific Straits and Pacific/Indonesian Conferences are substantially the same—that "Equalization shall only be paid on the basis of the lowest applicable rates."

In practice, the freight bill showing the amount actually paid by the shipper to an overland carrier to transport the

shipment from point of origin to San Francisco (or other port of loading) is used in determining the amount of equalization to be paid; however, the bill is checked against carriers' tariffs to make sure it is the lowest rate. From this amount is deducted the "constructive" cost of transportation of the same shipment from point of origin to Stockton (or other port equalized "against"), determined from the same tariff. The difference is the amount of the equalization payment. The result is that the shipper pays, for overland transportation, a net amount equal to the cost of carriage at the lowest common carrier rate from point of origin to Stockton. As noted above there are exceptions where the shipper uses a contract carrier or his own truck. If the contract carrier's rate cannot be ascertained and in the case where a shipper uses his own truck the lowest common carrier rate is used.

Respondents submitted to complainant schedules showing details of all shipments in 1962 on which there was equalization against Stockton. These were examined by a tariff expert in Stockton's employ, over a period of about nine months in which he spent an estimated five to six months in preparing exhibits based on the data. According to his research on the PWC figures, out of 1,116 shipments involving a total of $107,272 in equalization payments, there were 314 instances of overpayment for a total of $8,254, and 322 instances of underpayment for a total of $2,810.

A substantial part of the $8,254 in alleged overpayments arose out of a practice, discontinued during 1962, of allowing the principal shipper of raisins to equalize on the basis of the rate for his less-than-truck-load shipments to San Francisco against the rate for truckload shipments to Stockton. This was done on the theory that if the shipper had shipped via Stockton, the LTL shipments would have been consolidated with shipments destined for Europe, to

form truckload shipments at a substantially lower rate. The shipper complained of the cessation of this palpably improper practice and testified on behalf of complainant as the sole malcontent shipper.

The Examiner concluded that,

> The inland rate situation was indeed shown to be complicated. The inland transportation industry manages to operate under it, however, and the conferences appear to have mastered its mysteries so as to operate their equalization rule fairly as a matter of practical procedure. With the single exception mentioned above —which was concerned with a well-defined dispute, with the conference ultimately taking the proper course—no shipper testified to any dissatisfaction with the theory or practice of calculating equalization under respondents' rule. There is no other evidence of any differences or possible preferences in the treatment of shippers similarly situated. Had there been any such pattern it may safely be assumed that complainant's expert, in the course of his meticulous examination, would have found it.

Stockton's exceptions to this conclusion amount to nothing more than a reargument of the contentions urged before the Examiner and we find his conclusion well founded and proper.

Stockton further argues that respondents' equalization practices result in unjust discrimination between shippers, in violation of sections 15 and 16 First of the 1916 Act, because varying equalization payments under the rules result in different charges for the same ocean transportation, because respondents ultimately collect varying amounts for transporting the same commodity between the same ports, depending on the inland transportation charges, which determine the amount of the equalization payment. Varying charges for identical services are *prima facie* dis-

criminatory and thus unreasonable unless justified. *Proportional Commodity Rates on Cigarettes and Tobacco,* 6 F.M.B. 48, 55 (1960).

Discrimination against a shipper is necessarily measured by what the shipper pays, not by what the carrier ultimately collects. Shippers who receive equalization allowances pay the same amount for through transportation, whether they ship via Stockton or San Francisco. No shipper has complained of discrimination, and there is no evidence of any differentiation among shippers similarly situated. Under similar circumstances, no evidence of discrimination against shippers was found in *Beaumont Port Commission v. Seatrain Lines,* 2 U.S.M.C. 693, 703, where, as we have already noted, Houston, Galveston and Texas City may be considered the respective equivalents of Stockton, San Francisco and Oakland-Alameda, and Havana the equivalent of conference destinations in the Far East:

> Complainants' contention that Seatrain's practice unjustly discriminates against Galveston and Houston will not bear analysis. The port-to-port rates to Havana from these ports and Texas City are the same. The shippers served by Seatrain pay the same through transportation charges, whether they ship from Galveston, Houston or Texas City. There is no complaint of, or evidence to show, discrimination against shippers by Seatrain.

Moreover, any *prima facie* discrimination based upon ocean carriage alone—as between, say, a shipper located at San Francisco who receives no equalization allowance and one located at Fresno who receives equalization against Stockton when he ships via San Francisco—is justified by the facts of record. The record is clear that the fewer loading ports in the normal itinerary, the better operating results the carrier will have. To eliminate equalization, there-

by requiring carriers either to call at Stockton or abandon some of the cargo in that area, would be beneficial to the Port of Stockton and perhaps some of the shippers in that area. But the public interest is much larger than the needs or desires in the Stockton area. The equalization under consideration here reflects an overall economic good, tangible benefit to the public at large, and an important transportation justification.

We conclude that no unjust discrimination between shippers, or undue or unreasonable preference or advantage to any particular person, within the meaning of sections 15 and 16 First of the 1916 Act, may be found in respondents' equalization rules or their practices pursuant thereto.

Stockton also argues that the respondents unnecessarily dissipate their revenues through their equalization allowances, since (1) the most economical way to move cargo is to load it aboard a vessel which is at Stockton, and (2) in some cases cargo which is equalized against Stockton would be shipped via San Francisco anyway. Such dissipation is alleged to be contrary to the public interest and detrimental to the commerce of the United States, in violation of section 15 of the 1916 Act.

The record does not support Stockton's contentions. The most economical way to move cargo was shown not always to be to load equalized cargo aboard a vessel at Stockton which was there to load other cargo. PFEL frequently transships cargo by truck (at its own expense) to San Francisco for loading aboard a vessel which has called at Stockton, because it is cheaper to do that than to move the vessel, at a cost of some $300, from a bulk cargo berth to another berth at Stockton. Transshipment costs the carrier a great deal more than equalization, since it not only pays the full cost of truck transportation from Stockton

to San Francisco, but also pays handling and loading charges to both ports.

Even if it is more economical for a carrier whose vessel is already at Stockton to load there rather than equalize, it does not follow that it will be cheaper for a competitor that does not have a ship at Stockton and does not have bulk cargo contracts which make it economical to send a ship there.[9] For the carrier that actually equalizes, there is no dissipation of revenue through equalizing as against sending a ship to Stockton. In this respect, equalization is self-correcting. If there is sufficient cargo available to a carrier to make it more economical to call at Stockton, the carrier will normally do so rather than equalize.

There is no evidence that equalization is not profitable, overall, to any carrier that equalizes, nor is there any evidence that the public interest or commerce of the United States has been adversely affected by any dissipation of carriers' revenues. The evidence indicates, rather, that equalization is financially beneficial to the equalizing carrier.

Moreover, it should be noted that even with equalization, Stockton's growth since 1957 has put it ahead of the ports of San Francisco, Oakland and Alameda combined, in export tonnage. General cargo (via conference and non-conference vessels) to conference destinations increased by over 50% in 1962 over 1961, although total cargo to

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9. Respondent PFEL, the only carrier that was critical of equalization against Stockton, frankly considers its position to be "more advantageous than others insofar as calling at the Port of Stockton . . . we have contracts for bulk cargoes for justification to put us up to the Port of Stockton which other lines do not have." Thus PFEL feels it could get "the lion's share" of any additional tonnage going through Stockton. Still, PFEL now transships cargo from Stockton by truck and also equalizes against Stockton.

conference destinations declined from 1,308,558 tons to 1,108,726 tons. Thus, equalization has not seriously affected Stockton's competitive position. Stockton also argues that there is a violation of section 205 of the Merchant Marine Act, 1936, which provides:

> SEC. 205. Without limiting the power and authority otherwise vested in the [United States Maritime] Commission, it shall be unlawful for any common carrier by water, either directly or indirectly, through the medium of an agreement, conference, association, understanding, or otherwise to prevent or attempt to prevent any other such carrier from serving any port designed for the accommodation of ocean-going vessels located on any improvement project authorized by the Congress or through it by any other agency of the Federal Government, lying within the continental limits of the United States, at the same rates which it charges at the nearest port already regularly served by it.

No functions with respect to this section of the 1936 Act were transferred to the Federal Maritime Commission by Reorganization Plan No. 7 of 1961, which established the Commission. However, complainant suggests that section 205 remains the law of the land, and must be considered by the Commission in exercising its delegated functions. Stockton is a port designed for the accommodation of ocean-going vessels, located on an improvement authorized by the Congress, and is therefore entitled to the protection of section 205, as our predecessor said of the Port of Stockton and other bay area ports in *Encinal Terminals v. Pacific Westbound Conference,* 5 F.M.B. 316, 320 (1957). But section 205 is not violated by respondents' equalization rules as observed in practice; i.e., with the elimination from the rules of the phrase purporting to restrict its operation to cargo "which would normally move" from a given point. This apparent restriction has

no practical relation to the theory or operation of the rule. Perhaps it was originally intended to make it clear that cargo may be equalized even though it might "normally" move from another port, thus anticipating any objection on that ground. The rule should be drafted to exclude what is clearly not intended as a restriction. The rules, as applied, permit equalization in favor of Stockton to exactly the same extent as against it. Respondents comply literally with the statute by serving Stockton at the same rates which they charge at the nearest port regularly served by them, since rates are the same for all bay area terminal ports. If equalization is considered to change the base rates from any such port, respondents are in compliance with the statute because they offer the same equalization to shippers who wish to load at Stockton.

Finally, Stockton argues that equalization "serves as a cloak for malpractice." In support of this proposition PFEL's representative referred to one case of unidentified "malpractice" which he said had resulted in a Commission investigation. The representative further testified that upon two occasions PFEL had been offered a shipment if it would equalize on the basis of a trucker's bill of lading showing a point of origin more remote from the loading port than the actual point of origin. As respondents suggest, it would appear that if a shipper and carrier conspire to engage in crime, they can find simpler and safer methods than getting a third party to produce a false bill of lading. Giving full credence to PFEL's testimony, however, it cannot be concluded that respondents' equalization rules and practices offer such a peculiar temptation or facility for malpractice as to make it desirable to eradicate equalization completely. There was no evidence in the record of any malpractice affecting Stockton.

Stockton also points to a practice of the PWC respondents with respect to citrus fruit, allegedly affecting Stockton. For a number of years it has been the practice of respondent PWC and its members to allow an "equalization" payment of 15 cents per carton on citrus fruit shipped from San Francisco if it originated in "Southern California." Southern California is defined as the territory south of a line drawn east from Santa Barbara, south of the area in which constructive mileage, and carrier rates, are lower to Stockton than to San Francisco. This 15-cent allowance is not based upon any excess overland transportation cost as such, but rather on the fact that citrus shippers located south of the Santa Barbara line quote exporters a price delivered to a dock in "Northern California"—particularly San Francisco—which is 15 cents per carton higher than their price delivered to dock in Los Angeles Harbor. For reasons not apparent from the record the ocean carrier allows the exporter (the shipper from the standpoint of ocean carriage) an amount equal to this difference in the price of fruit delivered f.a.s. San Francisco as against f.a.s. Los Angeles. There is in practice no other equaliztion with respect to citrus fruits. The conference is not asked to equalize against Stockton or otherwise on fruit originating north of the Santa Barbara line, and in practice citrus fruit is never shipped from Stockton.

Thus, there is an allowance against ocean freight on citrus fruit shipped from "Northern Calfornia" ports as against shipments from "Southern California" ports at the rate of 15 cents per carton, based upon an arbitrary price differential of 15 cents, with respect to fruit originating south of the Santa Barbara line.

The PWC chairman necessarily conceded that this "equalization" is not found in the PWC equalization rule,

but PWC argues that it accords with the principle of equalization, which it contends is the absorption by the carrier of the difference between the shipper's cost at the nearest terminal port and the loading port. But this is too loose and inaccurate a definition. As the rule itself states, equalization is the absorption by the carrier of the shipper's excess cost of *delivery* to the loading port. That is quite different from absorbing a differential in the shipper's ("exporter's") purchase price, resulting from a sort of basing-point system used by the grower-seller. The exporter, who is the shipper as far as the ocean carrier is concerned and the one who bills the conference for equalization, in fact has no cost of delivery to ship's tackle; he buys at a flat price f.a.s.

The conference has reported to the Commission data with respect to citrus fruit equalization, purportedly as equalization under its tariff rule, showing point of origin as "Southern California" and rate of equalization at 15 cents per carton. This does not validate the practice, but neither does it invalidate respondents' published rule, nor contaminate the rule so as to require its disapproval.

However, this so-called equalization on citrus fruit is not in accordance with or pursuant to respondents' filed tariff. Thus, respondents PWC and its members have failed to comply with paragraphs (1) and (3) of section 18(b) of the 1916 Act, in that they have not filed a rule or regulation which affects a part or the aggregate of their filed rates, and have charged a different compensation for transportation from their rates and charges on file. Moreover, in our view, the absorption of an arbitrary amount based upon a differential in delivered "price" of a commodity is unjustly discriminatory between ports within the meaning of section 15, since the amount absorbed has no

transportation basis or justification. It is further found, however, that such practices have not diverted cargo from, and do not affect, the Port of Stockton.

While the examiner concluded that the rules and practices with respect to equalization between terminal ports within the San Francisco Bay area were not unlawful, he found that:

> . . . to the extent that they permit general equalization upon cargo loaded at the ports of Los Angeles and Long Beach, California, based upon the excess cost of inland transportation from point of origin to such ports over such cost to San Francisco, Stockton or any other port within the San Francisco Bay harbor complex, are unjustly discriminatory and unfair between ports, within the meaning of section 15 of the 1916 Act; and to such extent the said rules, and practices pursuant thereto, are disapproved.

PWC excepts to this holding on the grounds that the examiner made no findings to support this conclusion contrary to the requirements of section 8(a) of the Administrative Procedure Act (5 U.S.C. 1007) and that there is no evidence in the record, not to say substantial evidence, on which this finding could be premised.

We hold that the examiner decided this issue correctly and on the basis of adequate proof. The initial decision correctly set forth the legal test to be used: If the absorption of inland rate differentials destroys the right of ports to traffic originating in the areas naturally tributary to them, the absorption is unduly prejudicial to such ports where service from the port equalized against is adequate. The examiner noted that the number of shipments equalized against Stockton in favor of Southern California ports in 1962 was small, but of substantial tonnage. The examiner found that the Golden Gate is 423 statute miles north of Los

Angeles and that the territory tributary to the Southern California area is not tributary to San Francisco Bay area ports. He further found that service from Bay area ports was adequate.

The record shows details of shipments equalized against Stockton where the cargo actually moved from Los Angeles and Long Beach. The record also shows details of inland transportation costs between interior points and terminal ports, including Los Angeles and Long Beach, and the adequacy of service at Stockton and other Bay area ports.

Therefore, we agree with the examiner that equalization of cargo via Southern California ports destroys the right of Bay area ports to traffic originating in the area naturally tributary to them. It is obvious that this type of equalization diverts traffic away from the natural direction of the flow of traffic. This situation is, as found by the examiner, contrary to our decisions in *Proportional Commodity Rates on Cigarettes and Tobacco,* 6 F.M.B. 48 (1960), and *City of Portland v. Pacific Westbound Conference,* 4 F.M.B. 664 and 5 F.M.B. 118 (1956).

The examiner made those findings, supported by evidence, which are prerequisite to the application of the legal test of equalization. We, therefore, reject this exception of PWC.

PWC contends further that the equalization against Bay area ports where cargo moved through a Southern California port is not pertinent to the issues in this proceeding. We reject this argument. We will not ignore unjust discrimination even though it was not raised with respect to Bay area ports other than Stockton in the complaint. We disposed of a similar argument in *City of Port-*

land v. Pacific Westbound Conference, 5 F.M.B. 118, 129 (1956), where we stated:

> PFEL's view appears to require a conclusion that that we are rigidly limited in our findings and conclusions by the precise language of a complaint or order of remand, regardless of the facts which may be developed *and argued* by the parties to the proceeding.
>
> We do not share this view of our duties under the Shipping Act, 1916 ("the Act"). In our view, we would be remiss in our duties if, assuming actual direct service by Java Pacific, we did not, acting on this record, prevent continued unlimited equalization on dynamite by PFEL. As stated in *Chesapeake & O. Ry. Co. v. United States,* 11 F. Supp. 588, 592 (1935), in discussing an Interstate Commerce Act provision similar to our section 22:
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> > * * * after a complaint is filed before the Commission, it becomes the duty of the Commission, to investigate the complaint and take proper action upon its own motion * * * its power is not restricted by the issues raised on the complaint, provided * * * that the (respondent) * * * had full opportunity to make (its) defense.
> >
> > It is the duty of the Commission to look to the substance of the complaint rather than its form and it is not limited in its action by the strict rules of pleading and practice which govern courts of law.
>
> This Board, like other administrative agencies, has an affirmative duty to investigate as well as to decide, in consonance with its position as trustee of the public interest in matters within its jurisdiction.

The conference further argues that the examiner's finding in this respect should be qualified to take into consideration which of the San Francisco Bay area ports have adequate service. In fact, PWC contends that equalization should be proper where service at San Francisco

Bay area ports is unsatisfactory in any respect. We reject this test of equalization in favor of that previously expounded—that equalization is unlawul if it destroys the right of ports to traffic originating in the area naturally tributary to them where service from the San Francisco Bay area is adequate. And the likelihood of inadequacy at San Francisco Bay area ports is remote indeed. We, therefore, will not qualify the examiner's holding.

We reaffirm that respondents' equalization rules to the extent that they permit equalization upon cargo loaded at the ports of Los Angeles and Long Beach, California, based upon the excess costs of inland transportation from point of origin to such ports over the cost of inland transportation to Bay area ports, are unjustly discriminatory and unfair between ports within the meaning of section 15. We will disapprove the equalization rules to this extent.

An appropriate order will be entered.

Commissioner Hearn Dissenting:

I agree with the majority opinion in that the implementation of respondents' equalization rules in favor of Los Angeles and Long Beach are unjustly discriminatory and unfair. I find the discrimination so far as it relates to cargo which is naturally tributary to Stockton to be a discrimination against Stockton only, which for reasons given below can in no way be considered a San Francisco Bay area port.

I disagree, however, with the results reached by the majority and am convinced that the subject equalization rules against Stockton[1] are violative of Section 16 First of the

1. The statement at page 23 of the majority opinion that "The rules, as applied, permit equalization in favor of Stockton to exactly the same extent as against it" betrays a certain naivete in coming to grips with the issue. While the word "permit" lends authenticity to the statement, in the nature of things, the equalization must always work against Stockton vis-a-vis San Francisco Bay area ports.

Shipping Act, contrary to the public interest standard of Section 15, and in contravention of the principles and policies of Section 8 of the Merchant Marine Act, 1920, and Section 205 of the Merchant Marine Act, 1936.

I read the majority's action today as (1) frustrating the will of Congress in developing new and modern ports and (2) turning over to conference carriers, the right to determine which of our ports shall prosper and which shall suffer. Further, the establishment of Stockton as a "terminal port" by all of the Conferences, in 1957 by the Pacific Westbound Conference, becomes insofar as the port of Stockton is concerned, a meaningless gesture.[2] The majority has recognized that the port of Stockton "has had phenomenal growth" since the Port of Stockton attained "terminal port" status. I fear that the majority decision here will seriously impair that growth. Millions of dollars, both public and private, have been invested in the port.[3]

At least one conference carrier has provided substantial scheduled service at the port of Stockton. The majority's action today will bless the efforts of those carriers who have no intention of giving direct service to the port, and those carriers who have traditionally bypassed the port, with the opportunity to drain its general cargo. As the Commission stated recently *"In The Matter of Agreement Nos. 6200-7 etc.,* Docket 1166 (served June 24, 1965),

> "It seems elemental that the carriers best able to establish fair and equitable rates for a given trade

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2. This status was accorded as a result of *Encinal Terminals v. Pacific Westbound Conference,* 5 F.M.B. 316 (1957).

3. At the beginning of 1964 the capital outlay in the Port of Stockton was 23 million dollars. This investment included $9,800,000 by the port district; $3,200,000 by the city of Stockton; $3,800,000 by the Federal Government; $500,000 by the State of California; and $5,700,000 by private investors.

> are those carriers which are actually serving the trade . . . we believe the vesting of rate-making decisions in carriers who do not serve the area in whose rates they have a voice to be far more dangerous to the commerce of the United States than the existence of rate competition between two competing areas."

The majority notes at page 8, reasons why shippers favor equalization: regularity of service and shorter in-transit time. It goes without saying, I think, that shippers universally favor superior service and shorter transit time where these benefits can be secured without additional cost to them.[4]

In my view, the majority's reference that:

> "For almost a hundred years before Stockton was made accessible to oceangoing vessels, San Francisco was the principal port through which freight from the San Joaquin Valley would and did pass. It did not cease to be such a port merely upon the creation of an additional port at Stockton."

belies an unconscious adherence to the "fundamentally entitled" theory which has ceased to have any value since *Pacific Far East Lines, Inc. v. Federal Maritime Board*, 275 F 2d 184 (1960).

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4. A curious statement appears on page 8:
"If there were no equalization many perisable commodities would still move through San Francisco rather than Stockton." The majority, of course, do not state why any of the overland costs to San Francisco on commodities shipped through San Francisco *for the convenience of the cargo* should be absorbed by the carriers. This particular instance reveals the chink in the majority's decision: equalization is permitted against Stockton, as an economy to the carrier where the cargo would be shipped ex-Stockton, and having permitted this, a rebate measured by the difference by the overland cost to Stockton and overland cost to San Francisco on cargoes ordinarily and traditionally shipped ex-San Francisco follows because the cargoes intended for the different terminal ports can not be separated.

My dissent, however, need not be placed upon such broad generalities.

The central point here is conference tariff rules which "permit" carriers to equalize against Stockton. The majority has correctly assessed the thrust of the "permissiveness" of these rules: ". . . carriers find that competition compels them to equalize". Thus a conference carrier is not free to serve or not serve Stockton as its sound managerial judgment dictates, consequently the effect of the equalization rules is to restrict competition between the ports.

In reaching its ultimate conclusion, the majority found that (1) the port of Stockton is a port in the San Francisco Bay area, and (2) cargoes naturally tributary to Stockton are also naturally tributary to San Francisco. While I think neither of these findings is correct, I believe they skirt and confuse the central issue, which is: Do these tariff rules result in an unjust discrimination to the port of Stockton? The findings, moreover, are not supported by the facts, and have no valid basis in law.

First, the port of Stockton is not a San Francisco Bay port within the meaning of any statute administered by this Commission, and the cited "comprehensive report" of the California Legislature in 1951 referring to Stockton as a Bay Area port certainly is not controlling here, if indeed it has any relevance at all. The incontrovertible facts are that Stockton is some 107 constructive miles and several distinct waterways removed from San Francisco Bay. It is unthinkable that the Port of Stockton should be considered as juxtaposed to San Francisco, Oakland, Alameda and Richmond. The finding that Stockton should be treated as a Francisco Bay port must hang as an unwarranted fiction upon which no legal conclusion can be based.

Secondly, to say, as does the majority, that the "natural direction of the flow of traffic from the San Joaquin Val-

ley . . . is through the Golden Gate to the Pacific Ocean" begs the question. The point at issue is whether the "natural direction of the flow of traffic from the San Joaquin Valley . . . through the Golden Gate . . ." is through San Francisco or through Stockton. I hold to the belief that this natural flow is through Stockton, and succinctly stated, but for the equalization, an admittedly artificial device, San Joaquin exports would normally flow through the Golden Gate via Stockton, except where, *for the convenience of the cargo,* shippers are not only willing to but should pay their fair share of costs of the premium service offered at San Francisco.

The majority places some reliance upon 1951 Port Series[5] reports to show that the San Joaquin cargoes are as "naturally" tributary to San Francisco as they are "naturally" tributary to Stockton. A perusal of the cited works fails to uncover the adverb "naturally". Hence the "obviousness" that "these studies dictate a rejection of any 'constructive mileage' theory for determining 'naturally tributary territory' " is indeed wanting.

The only valid test, in this case, for determining whether or not the effectuation of the equalization rule, and consequently for determining whether respondents are giving "any undue or unreasonable preference or advantage to any particular person, locality, or description of traffic" or subjecting "any particular person, locality, or description of traffic to any undue or unreasonable prejudice or disadvantage" in violation of Section 16 First, is whether the traffic would move via San Francisco *but for* the equalization. Here, certainly, most of it *would not* and to the extent

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5. "The Ports of San Francisco and Redwood City, California." Port Series No. 30, Rev. 1951, and a similar study covering Stockton, also in 1951, prepared by the Corps of Engineers and the Maritime Administration.

that the artificial device draws traffic from Stockton it is unlawful.[6]

In this vein, I am convinced that the precedents support my view. There can be no doubt here that the equalized cargoes originate in areas "naturally and geographically tributary [to Stockton] because of inland transportation rates favorable to [Stockton] as well as through closer proximity". *City of Portland v. Pacific Westbound Conference*, 4 F.M.B. 664 (1955). Similarly, what was said in *City of Mobile v. Baltimore Insular Line, Inc.*, 2 U.S.M.C. 474 (1941), is appropriate here:

> "To permit continuation of unrestricted solicitation by carriers for business through condonation of a practice whereby unfavorable inland rates are overcome would wholly ignore the right of a port to traffic which it may be entitled by reason of its geographical location. Such right appears fundamental under statutes designed to establish and maintain ports".[7]

Again, in the *Portland* case, *supra*, our predecessors interpreted section 8 of the Merchant Marine Act, 1920, as requiring:

> "... that a given geographical area and its ports should receive the benefits of or be subject to the burdens naturally incident to its proximity or lack of proximity to another geographical area".

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6. An unforeseen consequence, perhaps, of the majority's decision, as I read it, would permit respondents to later equalize against Oakland, Alameda, Richmond and Redwood City in favor of San Francisco: They are all within the same "geographical area"; their traffic must move through the Golden Gate; carrier economies would be established; and, since the user shippers do no pay for it, directly, they would be satisfied.

7. Cited favorably as recently as 1960 in *Proportional Rates on Cigarettes and Tobacco*, 6 F.M.B. 48 (1960).

Moreover, the second Beaumont case at 2 U.S.M.C. 699 (1943), so heavily relied upon by the majority, is inappropriate here. As complainant aptly pointed out, the second *Beaumont* case turned, in large measure, on the peculiar characteristics of the equalizing carrier's operation. There the carrier, Seatrain, required, in addition to railroad tracks on the pier, "a supporting yard for sorting and holding cars, and car lifting facilities for transferring cars from the pier tracks to its vessels" which were not available at the ports equalized against. Such is not the case here. Stockton, the record shows, can accommodate all of the vessels of repondent conferences.

The striking down of the instant equalization rules, I am convinced, would be in furtherance of the will of Congress expressed by the Shipping Acts, section 205 of the Merchant Marine Act, 1936, and its several enactments respecting the port of Stockton itself. The absence of the equalization rules, moreover, would leave carriers free to serve or not serve Stockton as they desire, unencumbered by artificial devices designed to frustrate the growth of the port and calculated to check-mate the establishment of any carrier giving Stockton regular, scheduled service.

Statement by Commissioner Patterson:

Commissioner Patterson concurs in the result, but will issue later a supplemental report including a statement of his decision showing his findings and conclusions and the reasons or basis therefor.

/s/ THOMAS LISI
Thomas Lisi
Secretary

SERVED
September 24, 1965
FEDERAL MARITIME COMMISSION

Federal Maritime Commission

No. 1086

STOCKTON PORT DISTRICT

v.

PACIFIC WESTBOUND CONFERENCE ET AL.

ORDER

Full investigation of the matters and things involved in this proceeding has been had, and the Commission on September 24, 1965, has made and entered of record a report stating its conclusions and decisions thereon, which report is hereby referred to and made a part hereof. The Commission found in said report, *inter alia:*

1. That the equalization rules of the respondents (Pacific Westbound Conference, Pacific Straits Conference and Pacific/Indonesian Conference, and the members of these conferences), to the extent that they provide for or permit equalization of inland transportation from shipper's point of origin to any terminal port located on the harbor of San Francisco Bay and its connecting waters (the existing ports so designated and described being the ports of San Francisco, Oakland, Alameda, Richmond, Stockton, Sacramento), on cargo loaded at Los Angeles or Long Beach, California, are violative of section 15 of the Shipping Act, 1916; and

2. That the equalization rules of the above conferences and their members providing for or permitting

equalization of inland transportation from shipper's point of origin to any of the said terminal ports located in the harbor of San Francisco Bay and its connecting waters on cargo loaded at any other of said terminal ports are unclear in their references to cargo "which would normally move"; and

3. That Pacific Westbound Conference and its member lines have engaged in practices with respect to payment of purported "equalization" in connection with citrus fruit not provided for in their tariff in violation of section 18(b) of the Shipping Act, 1916.

THEREFORE, IT IS ORDERED,

1. That the respondents cease and desist from applying their equalization rules to cargo loaded at Los Angeles or Long Beach, and that modifications of their equalization rules to exclude their application to cargo loaded at such ports be filed within .... days of service of this order;

2. That the respondents, in so modifying their rules, omit the characterization of cargo as that "which would normally move" from certain ports; and

3. That respondent, Pacific Westbound Conference and its member lines cease and desist from their present practices with respect to payment of purported "equalization" in connection with citrus fruit in violation of their tariff.

By the Commission.

(SEAL)

/s/ THOMAS LISI
Thomas Lisi
Secretary

APPENDIX A

Rule No. 2 of Pacific Westbound Conference

(The "Equalization rule", so far as it relates particularly to the Port of Stockton, is underlined.)

Subject to Rules 5, 7 & 9, rates are based on direct loading at Conference terminal loading ports or docks. However, individual member lines may, in lieu of a direct call, absorb the cost of transhipment between terminal ports; or between terminal ports and non-terminal ports; also between non-terminal ports. Reference to non-terminal port absorption applies only if the non-terminal ports have the required minimum tonnage as specified in Rule No. 9, or elsewhere in this tariff. Carriers may equalize between terminal ports only from point of origin, as provided and subject to the limitations set forth herein.[1] Equalization is the absorption by the carrier of the difference between shipper's cost of delivery to ship's tackle at Terminal Dock at nearest conference terminal port and the cost of delivery to ship's tackle at terminal dock and port of equalizing line. Conference terminal ports and docks are those named in Rule No. 5. Conditions and limitations as to equalization follow:

(a) Equalization shall not exceed an absorption in excess of 35 percent of the ocean freight, including handling charges and wharfage.

(b) A carrier may not equalize between terminal ports and non-terminal ports, or between non-terminal ports or between docks within a port.

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1. In the Pacific Straits Conference rule and the Pacific/Indonesian Conference rule, the following appears in lieu of the foregoing four sentences:

> Rates are based on direct loading at loading port or docks, but the individual member line Carriers may meet the competition of other member lines loading direct at terminal ports or docks, either by transhipment or by equalization from point of origin.

Otherwise the rules of the three conferences are substantially the same, insofar as they relate to the Port of Stockton.

(c) When the inland cost of transportation from point of origin is lower to terminal ports in Oregon, Washington, or British Columbia than via California terminal ports, equalization may be applied via California terminal ports only on shipments of deciduous fruits and dairy products (See Note below covering Explosives) and such equalization shall be permitted only so long as there is not adequate service from the terminal port in Oregon, Washington, or British Columbia, to which the cargo is tributary, to meet the needs of shippers of these commodities.

NOTE:

Equalization on explosives is not permitted except that in the event a shipper is unable to obtain space for a specific shipment of explosives by a direct sailing from a terminal through which explosives would normally move at a date which reasonably will meet the needs of such shipper or his consignee, equalization shall be permitted on such shipment, *Provided,* that the shipper certifies to the Conference the need for space on such date and allows 48 hours after receipt of such certification for the Conference to indicate the conference carriers who can provide space on a direct sailing which reasonably will meet the shipper's needs.

(d) Equalization is permitted on shipments of fresh fruits, which would normally be shipped via California terminal ports when shipped via terminal ports in Oregon, Washington, or British Columbia, when there is not adequate service from the California port, to which the cargo is tributary, to meet the needs of shippers of these commodities.

(e) Cargo which would normally move from one terminal port in Oregon, Washington, or British Columbia, may be shipped under equalization through another terminal port in Oregon, Washington, or British Columbia, and cargo which would normally move from one California terminal port, may be shipped under equalization via another California terminal port.

(f) Equalization shall only be paid on the basis of the lowest applicable common carrier or contract carrier rates.

(g) In support of each claim for equalization the shipper must furnish the carrier a copy of transportation bill covering movement from point of origin.

(h) Prior to payment of equalization bills, Carriers must submit to the Conference on prescribed form a certified statement for confirmation and approval of applicable interior rates and/or the basis for equalization.

SERVED
September 28, 1965
FEDERAL MARITIME COMMISSION

Federal Maritime Commission

NO. 1086

STOCKTON PORT DISTRICT

v.

PACIFIC WESTBOUND CONFERENCE ET AL.

AMENDED ORDER

This amended order is to be attached to the report in this proceeding in lieu of the order served September 24, 1965, in this proceeding.

Full investigation of the matters and things involved in this proceeding has been had, and the Commission on September 24, 1965, has made and entered of record a report stating its conclusions and decisions thereon, which report is hereby referred to and made a part hereof. The Commission found in said report, *inter alia:*

1. That the equalization rules of the respondents (Pacific Westbound Conference, Pacific Straits Conference and Pacific/Indonesian Conference, and the members of these conferences), to the extent that they provide for or permit equalization of inland transportation from shipper's point of origin to any terminal port located on the harbor of San Francisco Bay and its connecting waters (the existing ports so designated and described being the ports of San Francisco, Oakland, Alameda, Richmond, Stockton, Sacramento), on cargo loaded at Los Angeles or Long Beach, California, are violative of section 15 of the Shipping Act, 1916; and

2. That the equalization rules of the above conferences and their members providing for or permitting equalization of inland transportation from shipper's point of origin to any of the said terminal ports located in the harbor of San Francisco Bay and its connecting waters on cargo loaded at any other of said terminal ports are unclear in their references to cargo "which would normally move"; and

3. That Pacific Westbound Conference and its member lines have engaged in practices with respect to payment of purported "equalization" in connection with citrus fruit not provided for in their tariff in violation of section 18(b) of the Shipping Act, 1916.

THEREFORE, IT IS ORDERED,

1. That the respondents cease and desist from applying their equalization rules to cargo loaded at Los Angeles or Long Beach, and that modifications of their equalization rules to exclude their application to cargo loaded at such ports be filed within 30 days of service of this order;

2. That the respondents, in so modifying their rules, omit the characterization of cargo as that "which would normally move" from certain ports; and

3. That respondent, Pacific Westbound Conference and its member lines cease and desist from their present practices with respect to payment of purported "equalization" in connection with citrus fruit in violation of their tariff.

By the Commission.

(SEAL)

/s/ THOMAS LISI
Thomas Lisi
Secretary

Report of Commissioner John S. Patterson:

The reasons for a separate report of my decision are that the majority, in my opinion:

(1) has gone beyond the Commission's functions assigned under section 103 of Reorganization Plan No. 7 of 1961 by interpreting section 8 of the Merchant Marine Act, 1920, and section 205 of the Merchant Marine Act, 1936, and

(2) did not make the record show the ruling on each exception presented.

Functions relative to the authorizations in sections 8 and 205 were not transferred to us by the President with the approval of Congress pursuant to the Reorganization Act of 1949 but were vested in the Secretary of Commerce. The Secretary of Commerce is the federal official responsible for deciding what these sections mean under various circumstances, and we should not, in my opinion, prejudice his decisions nor create the possibility of unwarranted conflicting decisions among government agencies.

Section 8(b) of the Administrative Procedure Act directs agencies to make their records show the ruling upon each exception presented prior to decisions upon agency review. The subsequent decisions must also include a statement of the reasons or basis for all conclusions upon all the material issues of fact, law, or discretion presented on the record. This report of my decision is believed to comply with these mandates. My colleagues' report states: "if in stating those reasons we fail to treat any 'specific exception', it has nevertheless been considered and found not justified." It seems to me an adjudicator should not relieve himself of a responsibility to pass on complainant's well-thought-out ex-

ceptions with such general statements. The statements are only unsupported assertions without basis or reason.

The facts stated in the majority report are accepted for the purposes of this report.

Complainant Stockton made eight requested findings and conclusions with respect to sections 15, 16, 17, and 18(b) of the Act. The findings are summarized in the next paragraph as items 1 through 8, and the conclusions of Stockton are stated with respect to each section as noted.

Section 15. The equalization rules require disapproval as agreements because:

1. The amount of the payment cannot be determined by examination of the tariff in detriment to the commerce and contrary to the public interest.

2. The determination of the correct payment is impossible, also involving unjust discrimination between shippers and exporters.

3. Use of the Port of Stockton for freight "which would naturally pass through that port" is discouraged and decreased in detriment to the commerce and in conflict with public interest.

4. The rules result in discrimination and prejudice to the Port of Stockton and preference to other California ports.

5. Different shippers are treated differently in making equalization payments, causing detriment to the commerce and contrariety with public interest.

6. Carriers' revenues are unnecessarily dissipated in detriment to the commerce and contrary to the public interest.

7. Carriers serving Stockton are deprived of cargo against the public interest and in detriment to the commerce.

8. Improper equalization practices are concealed, contrary to the public interest and in detriment to the commerce.

Section 16. The equalization rules are unlawful because the same acts enumerated with respect to section 15 in items 2, 5, and 8 above also permit undue preference and prejudice or unjust "discrimination" (section 16 does not use the word) between shippers; and in item 4 result in undue prejudice to Stockton and undue preference to other California ports in violation of section 16, second paragraph, subparagraph "First".

Section 17. The equalization rules are prohibited because the same actions enumerated with respect to section 15 in items 1, 2, 3, 5, 6, 7, and 8 above constitute unjust and unreasonable regulations connected with the receiving, handling, and storing or delivering of property.

Section 18. The equalization rules violate subsection (b)(1) because the same actions with respect to section 15 in item 1 fail to meet the tariff filing requirements, and in item 2 above constitute an improper tariff publication.

For the reason that the Commission has no authority to administer sections 8 and 205, these laws are not discussed.

The Examiner made a decision on each request, found none of the claims proven, and rejected all of the requested findings and conclusions. Exceptions followed.

The exceptions of A. Stockton Port District and B. Pacific Westbound to which we must address ourselves are as follows:

A. Stockton Port District. Complainant excepts:

1. To all of the Examiner's ultimate findings and conclusions contained in the second paragraph on page 31 of the Initial Decision. The Examiner's ultimate conclusions and findings require subdivision for the purpose of rational

discussion about the distinct provisions of law which he finds not to be violated, so the exception becomes one to the conclusion that the equalization rules and practices pursuant thereto:

a. are not in violation of section 15,
b. are not in violation of section 16, second paragraph, subparagraph First,
c. are not in violation of section 17, and
d. are not in violation of section 18(b).

For the reasons noted above, references to section 8 of the Merchant Marine Act, 1920, and section 205 of the Merchant Marine Act, 1936, also referred to by the Examiner, are disregarded as not within our functions.

2. To statements regarding the geographical location of the ports of Stockton and San Francisco.

3. To statements regarding the geographical relationship of Texas City, Houston, and Galveston, Texas, in comparison with San Francisco, Stockton, and other Bay ports, and to the position of Beaumont, Texas, in relation to that of Los Angeles, California.

4. To a statement regarding the territory naturally tributary to Stockton.

5. To a statement that under existing decisions the conclusions regarding naturally tributary territory are determinative of the question as to whether equalization as between Stockton and other San Francisco Bay ports should be disapproved.

6. To the conclusion that the filed equalization rules comply with section 18(b)(1) without filing any inland carrier rates.

7. To the conclusion that the record does not support a finding and conclusion that as a practical matter the determination of payments is impossible.

8. To the statement that the rules as applied do not discourage or decrease the aggregate use of Stockton and other Bay area ports or divert traffic from its natural direction of flow.

9. To the statement that Stockton does not provide adequate service for general cargo shipments to which equalization is applicable.

10. To the statement that the rules and practices are not found to be unjustly discriminatory or unfair between ports.

11. To the statement that there is no unjust discrimination between shippers or undue or unreasonable preference or advantage to any particular person under sections 15 and 16 (First) of the Act.

12. To the statement that there is no evidence equalization is not profitable to any equalizing carrier, nor any evidence that the public interest or commerce of the United States has been adversely affected by any dissipation of carriers' revenues.

13. To the statement it can not be concluded that the rules are a facility for malpractice.

14. To the findings and conclusions with respect to citrus fruit insofar as they approve equalization practices with respect to such commodity if a rule is put in the tariff.

An exception as to the violation of section 205 has been disregarded.

B. Pacific Westbound Conference. Respondent excepts to the conclusion that the rules, to the extent that they permit general equalization upon cargo loaded at the ports of Los Angeles and Long Beach based upon the excess cost of inland transportation from point of origin to such ports over such cost to San Francisco, Stockton, "or any other port within the San Francisco Bay harbor complex", are unjustly discriminatory and unfair between ports under

section 15 and to such extent the rules and practices are disapproved.

The Examiner's ultimate findings and conclusions "contained in paragraph 2 on page 31 of the Initial Decision" are that no provision of the Act has been violated by respondents as a result of the facts summarized in the eight requested findings and conclusions in Complainant's opening brief. The generalized nature of Stockton's first exception requires going back over complainant's eight requested findings, particularly in response to Stockton's further request that "our Opening Brief and our Reply be considered in connection with our argument in support of our exceptions."

My rulings would be as follows:

The rules and practices are authorized by agreements filed pursuant to section 15. These agreements have heretofore been approved as a result of the approval of Agreements Nos. 57, 5680, and 6060. The authorized rules and practices are those in Rule No. 2 in Tariff No. 1-X of Pacific Westbound; Rule No. 1(b) in Tariff No. 6 of Pacific Straits; and Rule No. 1 in Tariff No. 7 of Pacific Indonesia. There is no issue that the agreements relate to the subjects listed in the first paragraph of section 15. We have held that an equalization rule is one of such subjects and must be filed unless the practice set forth in the rule is authorized by the basic Conference Agreements. *Pacific Coast Port Equalization Rule,* 7 FMC 623 (1963) (see pages 630, 631). Our order was affirmed and found valid in *American Export & Isbrandtsen Lines et al vs. Federal Maritime Commission et al,* 336 F. 2d, 650 (C.A. 9th 1964). The tariff rules are an implementation of the filed agreements Nos. 57, 5680, and 6060 provisions forbidding payment in respect of freight and absorption at loading ports of rail freights or other charges except as

"agreed to by two-thirds of the parties" and thereafter shown in tariffs. Two-thirds of the members have bound all the members to perform the equalization absorption rules.

The issues are whether (i) past approval should be withdrawn and disapproval substituted as authorized by Section 15 because of the eight reasons presented, (ii) misdemeanors should be found for violation of section 16, or (iii) unlawful acts halted for violation of section 17, or (iv) penalties imposed for violation of section 18(b).

A. Stockton's exceptions:

1. The ultimate conclusions and fiindings.

(a) Exceptions related to approval of agreements under section 15.

(1) The amount to be absorbed by a carrier through payments equalizing inland shipping costs to Stockton and San Francisco is as determinable as any general rule can make it in view of the various situations to be covered. The amount is measured "on the basis of the lowest applicable" rates, must be substantiated by "a copy of transportation bill covering movement from point of origin", and by a statement of "applicable interior rates and/or the basis of equalization". These requirements are preceded by a definition of what equalization is, such as the definition in Rule 2 appended to the Examiner's Decision. In other respects, pages 7 and 8 of the Examiner's Decision explain adequately how the absorption is a separate transaction after the established ocean freight is paid, and is computed on the basis of tariff-established inland transportation costs. This agency's precedents cited in opposition all concerned cases where the ocean freight rate was subject to adjustment depending on inland costs.

Here there is a separate payment in response to shipper application after objectively establishing inland costs and a public record is kept of all payments. The rule and computation of all amounts are known to everyone. No detriment to commerce nor contrariety with public interest has been proven.

(2) For the reasons given above showing the amount is ascertainable and known, the payments pursuant to the rule are equally easy to establish "on the basis of the lowest applicable common carrier or contract carrier rates" (or "lowest applicable rates" under the Pacific/Indonesia rule) and may not exceed "35 percent of the ocean freight". An established trade practice was shown involving inspection of the shipper's freight bill showing the amount actually paid to the inland carrier. From such amount the calculated cost of shipment to Stockton is subtracted and the difference is paid. Variations are reflected in appropriate revisions, as described by the Examiner. The determination of the "lowest" amount was shown in some cases to be difficult, or complicated, but not impossible. Complainant illustrated these circumstances, but never showed exactly how discrimination between shippers and exporters resulted from the difficulties or complexities, and no discrimination is discerned from inspecting the record. Detriment to commerce or contrariety with public interest are not proven by the fact of difficulty or complexity alone.

(3) The freight that would "naturally" pass through Stockton mostly would be freight that exporters could send to Stockton cheaper than to any other port since ocean freight rates are the same as from San Francisco; consequently, "naturally" is taken to be a euphemism for more cheaply or at less cost. Use of Stockton is unquestionably discouraged or decreased if any economic

advantages in using Stockton are cancelled by paying shippers their added expenses of shipping somewhere else. If the issue were the effect of equalization payments on Stockton alone, the case would end right here, but the effect on shippers and carriers must be considered too. The record showed that the effect of the expenses absorbed by the carriers and payments to shippers pursuant to the rule were for their mutual economic advantage. Shippers benefit from access to frequent, regular, and reliable service at San Francisco. Many are put on competitively more equal terms with shippers of similar products who are closer to San Francisco. Necessary services such as government inspections required for export are available at San Francisco but not at Stockton. Inspections by the Department of Agriculture related to the Public Law 480 program involving primarily bulk cargoes are undertaken, however. For 1961, for example, 200,357 tons of commercial bulk cargo were loaded to or transshiped for conference ships as compared with 51,045 tons of commercial general cargo. Carriers benefit by not having to make the extra 75-nautical-mile journey to Stockton for amounts of cargo insufficient to support regular berth service. The trip costs from $3,200 to $5,000 a round trip. The journey is to some extent hazardous, involving delays for bridge lifting at several points, fogs, turns in the river impeding radar perception, and there have been through September 1961 a total of 110 groundings since the opening of the channel, of which 44 have occurred since December 1947. Stevedoring is more efficient at San Francisco. Stockton is principally a bulk-cargo port, and ships loading parcel cargoes in some cases must move from a bulk loading berth to a general cargo loading berth at extra expense. (Note: The illustration accom-

panying my dissent in Docket No. 1084 makes clear how such ship movement is made necessary.) The Examiner correctly analyzed this evidence as establishing, on balance between Stockton's interest and those of carriers and shippers, no detriments to commerce or conflict with public interest.

(4) Undue, unjust, or unreasonable discrimination, prejudice, and preference involve choices creating inequality of treatment of similarly situated persons for no reason. There are legitimate economic reasons for the carriers' rule based on the different situations at the two ports. The carriers' choice of making equalization payments to avoid a trip to Stockton and the shippers' choices in sending merchandise to San Francisco and having part of the inland transportation costs paid by the carriers involve legitimate business advantage to each. The advantages and disadvantages are described in (3) above. The rights of Stockton to be used as a port do not transcend these mutual advantages. Invalidation of the rule to advantage Stockton would leave the carriers three other choices: (i) to go to Stockton and load available cargo regardless of expense, (ii) transship from Stockton by land or intermediate water transportation and pay the entire cost including terminal and handling costs, or (iii) give up the cargo and not serve Stockton. The first two would not disadvantage the shipper but would cause the carrier expenses which would have to be recovered in higher rates. The third choice would harm shippers who could transport overland more cheaply to Stockton than to San Francisco. The situations of the parties are in no respects comparable. As long as the purpose and effect of the rule are mutual economic advantage of the carriers and shippers, ports and localities are not unreasonably dis-

advantaged. If the rule diverted traffic from Stockton with no advantage to shippers or carriers, the situation would be different from what this record shows. This record shows economies in carrier operations and more efficient service as a result of equalization. I concur in the Examiner's discussion of this evidence.

(5) There was no evidence that the rule inevitably causes different shippers to be treated differently in making equalization payments. The point is made largely by argument that variations in payments were inevitable because of variations in the inland transportation charges caused by variations in weight and origin of shipments. It was also shown that raisin growers do not receive payments equal to the different costs to ports, because of the application of less-than-truckload rates or of regular truck tariff rates where the shipper uses his own truck, and citrus fruit is not dealt with under the rule. These facts do not invalidate the rule, but may show violation of the law in the administration of the rule. If there is cheating by discriminatory administration of the rule or by disregard of the rule for favored shippers, another case is presented not capable of resolution on this record. The rule itself is not at fault in such a case, but rather the conduct of carrier officials.

(6) Dissipation of carrier revenues is not evidence of illegal conduct. Those carriers which spend more money to serve Stockton do so for reasons of self-interest, but voluntary expenditures do not invalidate the rule merely by describing them by the pejorative "dissipation". On the whole, the record showed that for most of the carriers it was less expensive to absorb part of the inland shipper costs than to make the trip to Stockton. No detriment to commerce or contrariety with public interest is shown by these facts.

(7) Carriers serving Stockton are deprived of Stockton cargo as a result of the absorption of the excess inland freight to San Francisco over Stockton, but, equally, carriers serving San Francisco would be deprived of cargo under any other arrangement, and Stockton has not established any superior right to offset the conveniences of the shipping public and carriers. No detriment to commerce or contrariety with public interest is shown by these facts.

(8) Concealment of improper practices by the rule presupposes the existence of improper practices being concealed, but none was proven. All that was produced were speculative possibilities and testimony of what one witness called "improper practices". Opinions are not proof. There has been no adjudication of the illegality asserted by the opinions, even assuming the rule itself were proven inevitably to cause illegal conduct. If conduct is shown to be illegal, it will have to be punished by some other means than invalidation of the rule which will harm all carriers following the rule, but leave the guilty party unpunished.

The exceptions related to section 15 should be overruled.

(b) Exceptions related to violations of section 16.

(1) The determination of the correct amount of the equalization payment under the rules was found as a practical matter to be possible and no individual carrier's guilt in cheating on computations was proven. Complainant, by inference and argument, has only sought to prove that "it leaves the door open to undue preference and prejudice between shippers" and has argued that the possibility is inevitable. Complainant treats the rules themselves as the malefactor. (See par. XIII, subparagraphs 3 and 4, Complaint.) Section 16 applies to common carriers either alone or in conjunction with any other person directly or indirectly, and the prohibited acts in specific instances by named persons must be proven to establish a misdemeanor.

No such acts have been linked up with any respondent on this record. If the instances involving the raisin growers, or truckers using their own trucks, or citrus fruit shippers are thought to prove misdemeanors, the testimony without documentary proof in this record is inadequate. We should have exhibits showing similar transactions and disparate treatment deviating from what the rule purports to do.

(2) For the same reasons the testimony regarding different treatment of shippers was inadequate because not connected with any instances of specific wrongdoing.

(3) The charges that improper equalization practices are "concealed" or that the rule serves as a "cloak" for improper practices are innuendoes and equally faulty as substitutes for proof of misdemeanors.

No violation of any provision of section 16 has been proven, and the exceptions related thereto should be overruled.

(c) Exceptions related to violations of section 17.

Under the first paragraph of section 17, complainant, after stating it is "in competition as a port and a terminal with San Francisco . . ." (Complaint, par. XII), alleges the rule causes "charging and collecting . . . rates and charges that are unjustly discriminatory between shippers and ports . . ." (Complaint, par. XII (5)).

The preceding report answers, first, on precedent such payments were authorized in *Beaumont Port Commission v. Seatrain Lines,* 2 USMC 699 (1943) and, second, on definition the "natural" flow of overseas traffic from the San Joaquin Valley has always been through the Golden Gate. Neither precedent nor definition, however, explains why the standards of the statute are not disregarded by charging the same ocean transportation rates from both ports, and then by paying those shippers who might otherwise choose Stockton a part of their inland transportation

cost as an inducement to choose San Francisco instead. There is no doubt Stockton is going to be discriminated against by this practice and is entitled to a reasonable explanation of why any discrimination is or is not unjust other than that the act has been done before in Texas or that, before Stockton spent its money for a port, traffic went through the Golden Gate anyway, and that traffic is just as "naturally tributary" to San Francisco as to Stockton.

Stockton makes the very reasonable and compelling argument that if a port invests millions of dollars in development largely with public money, it is entitled to all the cargo that may be sent to the port cheaper than to any other port. Certain formulas using constructive mileages to delineate areas are used to establish inland transportation costs. The cargo that may be sent to the port easier than to any other port is then called local tributary traffic, as I understand the argument. Stockton says other ports may not take away this local tributary traffic, nor take away the advantages of getting cargo to Stockton by equalization payments to shippers. My answer is Stockton has no such rights by virtue of expenditures or the existence of a "natural" flow or local tributary traffic and, absent such rights, the discrimination induced by the carriers' refunds and exercised by shippers is not unjust.

The justification for public investment in port construction comes before, not after, the investment. The investment depends on commercial potentialities, not on future rights. Once made, the investment does not thereafter create legal rights to a flow of business or entitle anyone to anything, but only creates opportunities to exploit. The only creator of opportunity or business values now claimed by Stockton as a matter of right or entitlement is the peculiarity of the same ocean freight rates from Stockton as from San Fran-

cisco in spite of longer travel time and distances. The peculiarity of such rates from Stockton was created by the carriers, not by Stockton. It is not unjust that the rate equality is eliminated by the absorption of partial inland transporting costs because the carriers have only eliminated what they created in the first place. Nothing is taken away that Stockton was entitled to, such as values it created. The consequences to public investment in ports are the consequences of past decisions to locate a port where business potentialities may never be fully realized rather than by denial of rights resulting in unjust discrimination.

Natural flow of traffic and local tributary traffic arguments are equally unfounded, being based on a supposition of vested rights to traffic based on mileages to ports regardless of economic considerations. Such rights have no relation to commerce which, as I see it, may not exclude monetary factors. Shipper choices and port and carrier benefits depend on savings to shippers. There is no such thing as a local tributary measure based on mileage formulas alone translated into rights to certain business regardless of cost. A local tributary measure must be related to transportation costs and there is no unjustness in offering shippers a saving in choosing one port over another, the geography of this case being what it is, as long as all are treated equally.

There is no unjust discrimination between shippers and ports, and the exception as to a violation of the first paragraph of section 17 should be overruled.

No consequence of the rule on the absorption of part of inland freight costs relates to a regulation or practice connected with the receiving, handling, storing, or delivering of property within the meaning of the second paragraph of section 17. *Beaumont Port Com'n v. Seatrain Lines,* 3 FMB

556 (1951). Neither the payment to the shipper measured by inland freight nor a reduction in rates involves receiving, handling, or storing of property, but involves transportation. The exception as to a violation of the second paragraph of section 17 should be overruled.

(d) Exceptions related to violations of section 18(b)(1).

(1) The amount of the payment was found above to be determinable from a reading of the rule and this is all that section 18(b)(1) requires. Section 18(b)(1) requires filing only of "rates and charges . . . for transportation to and from United States ports and foreign ports and between all points on its own route . . .".

(2) Determination of payments, while difficult, is possible. The objective of the rule and the guiding measures are stated and testimony disclosed precisely how payments were calculated in given instances. The unworkability of the rule was not proven. Three situations were alleged where payments may not have followed the rule, but there was no specific evidence. As noted earlier, if specific instances of discriminatory treatment or dishonesty in the application of the rule are shown, adjudication and punishment, if guilt is found, may be undertaken in separate proceedings.

The exceptions related to section 18(b)(1) should be overruled.

2. The statements regarding geographical location.

The Examiner's statements regarding the geographical location of Stockton and San Francisco are that we are dealing "with a single port as against another port in the same geographical area—in fact in the same harbor complex" and that ". . . both ports . . . may be described as San Francisco Bay ports . . .". Stockton is up the Sacramento

River and a long way from San Francisco Bay. The statement may be inaccurate, but the entire statement concluding with "Stockton simply does not exist as an ocean port separate from the Golden Gate" serves the useful purpose of highlighting the dominating geographical fact of this case, and of recognizing the geographical fact which prevents Stockton from having superior rights over San Francisco. The fact is that, to serve Stockton once, a carrier must go through the Golden Gate and pass San Francisco at least twice. If Stockton is served, so inevitably is San Francisco. Both carrier and shipper efficiency result by one stop and a shorter ocean journey. The total journey by land and sea is the same for the shipper in either case. The port in this journey at which commerce is best served on the facts of this case is, partly at least, where there is a concentration of services, particularly if it is a large port that has to be passed in any event. Arguments about "natural" flow of commerce or tributary territory prove little because success of the arguments depends on from where you measure the flow. I understand the Examiner to be saying in effect that detriments to commerce have to take this dominating fact into consideration, and the measuring point for territory "naturally" tributary or the point where the "natural" flow ends is not Stockton, but the Golden Gate. Unless carriers and shippers can avoid San Francisco by going to Los Angeles or somewhere else on the Pacific Coast, they should be able to make the most efficient arrangements possible to get cargo past the Golden Gate. Any inaccuracy in the statement does not negative the correctness of the essential point. The second exception should be overruled.

3. The statements regarding geographical relationships.

The statement regarding Texas City, Houston, Galveston, and Beaumont, Texas, is appropriate because ships serving

Texas City and Houston must pass Galveston coming in or going out to sea or may avoid Galveston by going to Beaumont north up the Gulf Coast to obtain inland shipments. The comparison with San Francisco and Galveston and Beaumont and Los Angeles is accurate. The third exception should be overruled

4. The statement regarding naturally tributary territory.

The fourth exception should be overruled for the reasons given in 2 above.

5. The statement that existing decisions determine disapproval.

The existing decisions hold that Beaumont, Texas, not being "within the Galveston Bay group" and Texas City being in such group, a carrier might compete for traffic by means of an absorption of inland freight without violating the law because traffic through Beaumont was not "naturally tributary to Texas City" which was served by the absorbing carrier. *Beaumont Port Commission v. Seatrain Lines, Inc.*, 2 USMC 699 (1943). The precedent is applicable and supports the ruling in 3 above. The fifth exception should be overruled.

6. The conclusion that the rules comply without filing inland rates.

The conclusion that the filed equalization rules comply with section 18(b)(1) without filing any inland carrier rates is supported by the reasoning that the amount of the payment is determinable from a reading of the rule. Section 18(b)(1) applies to "the rates and charges" of a carrier "for transportation to and from United States ports and foreign ports". Respondents fixed their ocean rates and the same rate applies from every terminal port. The equalization is another transaction involving a payment based on inland costs pursuant to a prescribed formula. The sixth exception should be overruled.

7. The conclusion that the record does not support findings.

For the foregoing reasons the record supports a finding and conclusion that as a practical matter the determination of payments is possible. The seventh exception should be overruled.

8. The statement that the rules do not discourage use of Stockton.

The Examiner's statements that the application of the equalization rules does not discourage use of Stockton or divert traffic from its natural flow are not determinative of the issues. The rules undoubtedly discourage use of Stockton by those nearer Stockton who have lower inland transportation costs to a port, but can ship just as cheaply from San Francisco as a result of the rule. Such discouragement, however, does not establish violation of any laws giving Stockton any protected rights to be used instead of San Francisco. Diversion of traffic from "natural flow" supposes a predetermined natural flow which does not exist. The direction of traffic is determined from moment to moment and operates in the future as each shipper decides where his self-interest is best served. The so-called natural flow is something only seen in retrospect as the collective results of decisions, not a preordained condition that dictates rights to have business. Complainant's reliance on diversion of a natural flow as a violation of rights apart from other malpractices is misplaced on the facts of this case, regardless of the Examiner's statements. The eighth exception should be overruled.

9. The statement that Stockton does not provide adequate service.

The facts showed that at Stockton certain general cargo operations were inconvenient and involved added expense,

transit and berthing difficulties exist, and government inspections required for export were not available, substantiating the statement that Stockton does not provide adequate service for some general cargo shipments. The uneconomic nature of cargo available at Stockton is shown by the fact that the commodities affected by equalization rules average 40 tons per shipment, and in 1961 71% of all Trans-Pacific Conference ships calling at Stockton loaded as little as from 0 to 50 tons of general cargo per departure (Exh. 52). The commodities concerned are largely condensed milk, raisins, instant coffee, hides, and lumber (Exh. 11). Witnesses agreed there was not enough cargo to support regular berth service.

The ninth exception should be overruled.

10. The statement that the rules are not discriminatory.

The statement that the rules and practices are not discriminatory is substantiated by the reasoning in support of the conclusion there has been no violation of section 16. The tenth exception should be overruled.

11. The statement that there is no discrimination between shippers.

The eleventh exception concerning unjust discrimination should be overruled for the reasons given in 10 preceding.

12. The statements regarding the profitability of equalization.

The statements regarding the profitability of equalization are not determinative of any issues. The claims regarding "dissipation" of carrier revenues as having an adverse effect on commerce were not substantiated by fact any more than the Examiner's statement.

The twelfth exception should be overruled.

13. The statement that the rules no not facilitate malpractices.

Each malpractice occurring as a result of the rules must be adjudicated by proof of specific acts with guilt individually assessed. Any malpractices are the results of actions by people, not the rules. The rules equally permit legitimate practices. If the rules facilitate malpractices, the perpetrators of the malpractice, not the enactors of the rule, must be blamed. The diversion-of-cargo part of the statement excepted to has been discussed above and ruled not controlling.

The thirteenth exception should be overruled.

14. The findings and conclusions with respect to citrus fruit.

The Examiner's findings and conclusions with respect to citrus fruit are that certain allowances are made at the rate of 15¢ per carton for fruit originating in "Southern California" and shipped from San Francisco. This allowance has nothing to do with Stockton and is not pursuant to the rule, but is simply a practice which is not in accordance with or pursuant to the tariff. The Examiner correctly found section 18(b) of the Act was being violated, but the violation is outside the scope of the Complaint. Neither the Examiner's nor the majority's report herein contains any express recognition of the provision of law that whoever violates any provision of section 18(b) shall be liable to a penalty for each day a violation continues. The omission, however, does not mean that there is approval of the "equalization practice" with respect to such commodity even if a rule is put in the tariff. The finding of law violation is enough. The issue of future validity will still have to be passed on, but in the meantime past lawbreaking is not validated. The fourteenth exception should be overruled.

B. Pacific Westbound's exception:

The basis of the respondent's exception is that the Examiner made no findings to support his conclusion as he is

required to do under section 8(b) of the Administrative Procedure Act, and there is no evidence on which to base the conclusion. Other than a factual statement that the number of shipments was small but the tonnage substantial and that the Golden Gate is 423 miles north of Los Angeles, there are no findings. These particular facts are neither analyzed as findings nor connected by any reasoning whatever with the abrupt conclusion that the record does not support a conclusion the territory tributary to Los Angeles (Wilmington and Long Beach) overlaps "that of the San Francisco Bay area ports". It does not "follow", nor do the findings support the announced conclusion. Statements of fact followed by the announcement of conclusions are not enough. Reasoning is needed to connect the two. Accordingly, the exception might have been sustained. My colleagues, however, supplied the reasoning by stating that (a) where the "absorption destroys the right of ports to traffic originating in naturally tributary areas", (b) where service at the ports equalized against is adequate, and (c) where the record shows the substantiating details, there is an unlawful diversion. Neither this reasoning nor the factors in (b) and (c) were in the Examiner's decision, and it is not supplied by any correct setting forth of "the legal test". Accordingly, the deficiency is adequately remedied and the exception may be ruled no longer material to the decision.

Based on the foregoing rulings, I would conclude on the issues:

1. Past approval of agreements filed by respondents should not be withdrawn and disapproval substituted pursuant to section 15. The agreements should remain approved.

2. No misdemeanors should be found for violation of section 16 because of lack of proof.

3. No violation of section 17 has been proven.

4. No violation of section 18(b), as charged in the complaint herein, has been proven.

Appendix D

Conference Member Lines Who Are Respondents Herein

1. Members of Pacific Westbound Conference

AMERICAN MAIL LINE, LTD.

AMERICAN PRESIDENT LINES, LTD.

ISTHMIAN LINES, INC.

JAPAN LINE, LTD.

KAWASAKI KISEN KAISHA, LTD.

KLAVENESS LINE—
- Skibsaktieselskapet Solstad
- Skibsaktieselskapet Siljestad
- Universal Trading & Shipping Agency Aksjeselskap

KNUTSEN LINE—
- Dampskibsaktieselskapet Jeanette Skinner
- Skibsaktieselskapet Pacific
- Skibsaktieselskapet Marie Bakke
- Dampskibsaktieselskapet Golden Gate
- Dampskibsaktieselskapet Lisbeth
- Skibsaktieselskapet Ogeka
- Hvalfangstaktieselskapet Suderoy

DAMPSKIBSSELSKABET AF 1912 AKTIESELSKAB
AKTIESELSKABET DAMPSKIBSSELSKABET SVENDBORG
(A.P. Moller, Maersk Line)

MARITIME COMPANY OF THE PHILIPPINES

NEDLLOYD & HOEGH LINES
- N.V. Nedlloyd Lijnen
- Skibsaktieselskapet Arizona
- Skibsaktieselskapet Astrea
- Skibsaktieselskapet Aruba
- Skibsaktieselskapet Noruega
- Skibsaktieselskapet Abaco
- A/S Atlantica

NIPPON YUSEN KAISHA, LTD. (N.Y.K. LINE)

OSAKASHOSEN MITSUISENPAKU KAISHA, LTD.
(Mitsui O.S.K. Lines, Ltd.)

PACIFIC FAR EAST LINE, INC.

SHOWA SHIPPING CO., LTD.
(SHOWA KAIUN KAISHA, LTD.)
"SHOWA LINE"

STATES MARINE LINES, INC.
(Global Bulk Transport Incorporated)

STATES STEAMSHIP COMPANY

UNITED PHILIPPINE LINES, INC.

WATERMAN STEAMSHIP CORPORATION

YAMASHITA-SHINNIHON STEAMSHIP CO., LTD.
(Yamashita-Shinnihon Line)

FERN LINE
Skibsaktieselskabet Varild
Aksjeselskapet Marina
Aktieselskabet Glittre
Dampskibsinteressentskabet Garonne
Aktieselskapet Standard
Fearnley & Eger Befragtningsforretning A/S
(As one member or party only)
Fearnley & Eger

P & O ORIENT LINES

WILHELMSENS DAMPSKIBSAKTIESELSKAB
A/S Den Norske Afrika—Og Australielinie
A/S Tonsberg
A/S Tankfart I
A/S Tankfart V
A/S Tankfart IV
A/S Tankfart VI

2. Members of Pacific-Straits Conference

AMERICAN MAIL LINE, LTD.

AMERICAN PRESIDENT LINES, LTD.

ISTHMIAN LINES, INC.

KLAVENESS LINE
Skibsaktieselskapet Sangstad
Skibsaktieselskapet Solstad
Skibsaktieselskapet Siljestad

Dampskibsaktieselskabet International
Skibsaktieselskapet Mandeville
Skibsaktieselskapet Goodwill
Universal Trading & Shipping Agency Aksjeselskap

KNUTSEN LINE
Dampskibsaktieselskapet Jeanette Skinner
Skibsaktieselskapet Pacific
Skibsaktieselskapet Marie Bakke
Dampskibsaktieselskapet Golden Gate
Dampskibsaktieselskapet Lisbeth
Skibsaktieselskapet Ogeka
Hvalfangstaktieselskapet Suderoy

DAMPSKIBSSELSKABET AF 1912 AKTIESELSKAB
AKTIESELSKABET DAMPSKIBSSELSKABET SVENBORG
(A.P. MOLLER-MAERSK LINE)

NEDLLOYD & HOEGH LINES
N.V. Nedlloyd Lijnen
Skibsaktieselskapet Arizona
Skibsaktieselskapet Astrea
Skibsaktieselskapet Arubo
Skibsaktieselskapet Noruega
Skibsaktieselskapet Abaco
A/S Atlantica

SHOWA SHIPPING CO., LTD.
(SHOWA KAIUN KAISHA, LTD.
"SHOWA LINE")

WILHELMSENS DAMPSKIBSAKTIESELSKAB
A/S Den Norske Afrika—Og Australienlinie
A/S Tonsberg
A/S Tankfart I
A/S Tankfart V
A/S Tankfart IV
A/S Tankfart VI
(BARBER LINE)

FERN LINES
Fearnley & Eger and
A.F. Klaveness & Co., A/S
Skibsaktieselskapet Varild
Skibsaktieselskapet Marina

Aktieselskabet Glittre
Dampskibsenteressentskabet Garonne
Skibsaktieselskapet Standard
Fearnley & Eger Befragtningsforretning A/A/S
Skibsaktieselskapet Sangstad
Skibsaktieselskapet Solstad
Skibsaktieselskapet Siljestad
Dampskibsaktieselskabet International
Skibsaktieselskapet Mandeville
Skibsaktieselskapet Goodwill
Universal Trading & Shipping Agency Akjeselskap

KAWASAKI KISEN KAISHA, LTD.

PACIFIC FAR EAST LINE, INC.

P & O ORIENT LINES

STATES STEAMSHIP COMPANY

3. Members of Pacific/Indonesian Conference

AMERICAN PRESIDENT LINES, LTD.

P.N. DJAKARTA-LLOYD

ISTHMIAN LINES, INC.

KLAVENESS LINE
Skibsaktieselskapet Sangstad
Skibsaktieselskapet Solstad
Skibsaktieselskapet Siljestad
Dampskibsaktieselskabet International
Skibsaktieselskapet Mandeville
Skibsaktieselskapet Goodwill
Universal Trading & Shipping Agency Aksjeselskap

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AKTIESELSKABET DAMPSKIBSSELSKABET SVENBORG
(A.P. MOLLER-MAERSK LINE)

FERN LINES
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Skibsaktieselskapet Varild
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Aktieselskabet Glittre

Dampskibsenteressentskabet Garonne
Skibsaktieselskapet Standard
Fearnley & Eger Befragtningsforretning A/A/S
Skibsaktieselskapet Sangstad
Skibsaktieselskapet Solstad
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A/S Den Norske Afrika—Og Australienlinje
A/S Tonsberg
A/S Tankfart I
A/S Tankfart V
A/S Tankfart IV
A/S Tankfart VI
(BARBER LINE)